

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

22 CR 673 (LAK)

6 SAMUEL BANKMAN-FRIED,

7 Defendant.

Trial

8 -----x
9
10 New York, N.Y.
11 November 2, 2023
12 9:52 a.m.

13 Before:

14 HON. LEWIS A. KAPLAN,

15 District Judge

16 APPEARANCES

17 DAMIAN WILLIAMS

18 United States Attorney for the
19 Southern District of New York

20 BY: DANIELLE R. SASOON

21 NICOLAS ROOS

22 DANIELLE KUDLA

23 SAMUEL RAYMOND

24 THANE REHN

25 Assistant United States Attorneys

COHEN & GRESSER, LLP

Attorneys for Defendant

BY: MARK S. COHEN

CHRISTIAN R. EVERDELL

SRI K. KUEHNLLENZ

DAVID F. LISNER

Also Present:

Luke Booth, FBI

Kristin Allain, FBI

Arjun Ahuja, USAO Paralegal Specialist

Grant Bianco, USAO Paralegal Specialist

1 (In open court; jury not present)

2 THE COURT: Good morning, everyone.

3 First of all, before we bring in the jury, if anyone
4 wants to be heard one way or the other on the issue of sitting
5 tomorrow which wouldn't necessitate excusing one juror and
6 substituting an alternate, I'll hear you briefly now.

7 MR. COHEN: Your Honor, we would be in favor of having
8 the jury deliberate tomorrow.

9 THE COURT: So to get to the bottom line, you're
10 asking me to excuse the juror who has plane tickets tomorrow
11 morning and substitute an alternate.

12 MR. COHEN: Yes, your Honor.

13 THE COURT: And on what ground and what's the showing?

14 MR. COHEN: Your Honor, we think that given the way
15 the schedule has gone—and it's certainly no one's fault—that
16 we're going to have more summation today and then of course
17 your Honor has to take the time for the charge, and that will
18 leave the jury with, you know, some limited time tonight, and
19 then we think a delay of an extra day could impact their
20 ability to deliberate about the evidence, and we would ask that
21 we continue the process by seating one of the alternates.

22 THE COURT: Government's position?

23 MR. ROOS: Your Honor, I think the jury will have a
24 good amount of time today and so first of all, we still think
25 it's premature, as Ms. Sassoong said yesterday and the day

1 before, and so at this time we would oppose replacing Juror
2 No. 3.

3 THE COURT: The application is denied. The likelihood
4 is there is going to be a weekend break in any event, and the
5 difference of a two-day weekend or a three-day weekend, in my
6 view, is immaterial. And it's just not sufficient to warrant
7 replacing the juror in question.

8 That said, let me tell you the schedule I have in mind
9 here, and then we'll go get the jury. I understand from what's
10 been said previously and publicly, the government expects to be
11 about three quarters of an hour. Is that still true?

12 MS. SASSOON: Yes, your Honor.

13 THE COURT: Okay. So that suggests that we'll be done
14 with that around 10:45. We'll take a break. We'll come back
15 and I'll start the charge. I will go for what I'm
16 guesstimating will probably be two hours or less. We'll then
17 take a 30-minute lunch break. The jury has lunch ordered.
18 Everyone else can happily consume cafeteria food. I'll
19 complete the charge after lunch, and I expect the jury will
20 have the case by somewhere between 2 and 2:30. That's, of
21 course, a rough estimate. I have no idea how long the jury is
22 going to take or whether they're going to finish today. I will
23 not keep them longer than 8:15. And transportation
24 arrangements will be ordered against the possibility they stay
25 that late, and nobody knows whether they will.

1 Okay. Let's get the jury.

2 MR. EVERDELL: Your Honor, sorry. We don't have to
3 address this now, we could do it at the break, but the defense
4 has an application with respect to the indictment that is going
5 to be provided to the jury for their deliberations. We had
6 mentioned to the Court, I think it was the day before
7 yesterday, about redactions to the indictment that we would
8 propose. We can take this up at the break. I don't think it
9 will be a long—

10 THE COURT: We'll take it up at the break, but there's
11 nothing like waiting till the last second, is there.

12 Okay. Let's get the jury.

13 MR. ROOS: Your Honor, for what it's worth, we won't
14 oppose the application, and we can prepare a redacted or
15 cleaned-up indictment.

16 THE COURT: Okay. Then it's not going to be a matter
17 of controversy.

18 (Jury present)

19 THE COURT: Good morning, everyone.

20 THE JURORS: Good morning.

21 THE COURT: The defendant and the jurors all are
22 present.

23 Let me just say a word to the jury about the schedule.
24 We're going to hear in a moment from the government on the
25 rebuttal summation. We will then have a 15-minute break. I'll

begin charging you on the law when that break is over. I won't do it all in one fell swoop. Sadly to say, it's going to take some time. So we will break for lunch at some convenient point in the course of my reading the charge. You know that your lunches have been ordered, and it will be a 30-minute lunch break in order to finish up and get the case to you. After lunch, I'll finish charging you. And I will not keep you later than 8:15, if you get that far. I'm not suggesting anything, of course, about whether you should or shouldn't or will need that much time or more or less. If you stay as late as 8:15, there will be transportation for those who need it, and we will order that up somewhere along the line. And as you may have learned from Andy already, Andy, who is a magician around here, has managed to accomplish the feat that if you do wind up having supper here, you have a choice of more than pizza. And you can thank Andy for that.

Okay. With that, Ms. Sassoona, we'll hear your rebuttal argument.

MS. SASSOON: Thank you, your Honor.

Telling your customers to trust you with their money, telling your customers that their assets are safe, segregated, safeguarded, held in custody, and then taking that money and spending it on yourself, on your business, on the same business that you've told your customers is separate, walled off, treated no differently from any other account, that is not a

1 reasonable business decision. That is fraud.

2 You've heard time and again—and it's true—that the
3 government is the only party with a burden in this case. We
4 have to prove the charges beyond a reasonable doubt. We've
5 embraced that burden, and we've met that burden.

6 But when the defense comes up and makes arguments,
7 it's your duty to scrutinize them, to examine whether they
8 match up to the evidence, to the testimony that you've learned
9 in this trial. They don't. The defendant has no obligation to
10 testify. He has a constitutional right not to. But if he
11 takes that stand, it's your duty to scrutinize what he said, to
12 consider whether it matched up with the evidence and the
13 testimony. It didn't.

14 Now I'm not going to address everything that Mr. Cohen
15 said. You've spent a long time listening to closing arguments,
16 and I know you've paid close attention to the evidence, and I
17 know that when you go to deliberate, you have the tools to
18 consider these arguments and to reject them. And so there are
19 some that I won't spend a lot of time on, like this argument
20 that there was no customer fraud because there were only two
21 customer victim witnesses. I expect Judge Kaplan will instruct
22 you that it's for you to consider what a reasonable customer, a
23 reasonable investor, would have believed based on the false
24 representations by the defendant.

25 Now Tareq Morad got up there and he told you that when

1 he looked at his account balance, he thought that meant the
2 money was there, that it was being held for him, that it was
3 custodied for him, and of course that was reasonable. You know
4 that from the terms of service, which told customers that their
5 assets belonged to them, but this case doesn't rise and fall on
6 the terms of service. Judge Kaplan is going to instruct you to
7 consider the full slate of representations made to customers.
8 And you've seen them. I'm not going to pull them back up—the
9 tweets, the policy documents, the congressional testimony that
10 was publicized. The defendant himself told you that he knew
11 his customers were reading his tweets, reading the news
12 articles, he was publicizing his testimony on Twitter. And so
13 take a look at the terms of service, but look at exhibits like
14 Government Exhibit 340. This was the asset management policy
15 of the business that applied to fiat and crypto. And it said:
16 We're holding your assets, they're ring-fenced, they don't
17 belong to FTX. And witness after witness got on that stand and
18 told you, this was a sacred, unbreakable rule. Your money is
19 your own. It's not for FTX to use. And that's what the
20 defendant himself said time and again to his customers.

21 And so you know, without hearing from Tareq Morad or
22 Marc-Antoine Julliard, that a reasonable customer would see and
23 hear those statements and be given the false impression that
24 their money was safe with FTX and that Alameda did not have
25 unlimited access to customer funds without playing by the rules

1 of the exchange.

2 Another argument that you can reject quickly:
3 Mr. Cohen said, well, if the defendant were a fraudster, why
4 would he repay the lenders instead of taking the money and
5 running? This isn't a crime like robbing a bank in broad
6 daylight, where the defendant committed the crime in broad
7 daylight and then went on the run. He didn't want to be a
8 criminal on the run. You heard about his ambitions. This is
9 somebody who wanted to be president of the United States, who
10 thought he could and should be president of the United States.
11 This is someone who wasn't satisfied starting a crypto trading
12 forum; he wanted to start a crypto exchange. And when he
13 started that exchange, that wasn't enough; he wanted to be the
14 biggest exchange in the world. He wanted to crush his rival
15 Binance. And when his exchange was making a billion dollars in
16 revenue, that wasn't enough to satisfy his spending; he wanted
17 billions and billions of dollars more from his customers, to
18 spend on gaining influence and power.

19 He wasn't going to take the money and run. It's the
20 same reason that he testified before Congress and spoke to the
21 media. It was part of an effort to present himself as
22 legitimate, as trustworthy, as running an exchange that was
23 reliable and safe, where customers should deposit their money.
24 And when it came to lenders, he had the arrogance that he could
25 get away with the fraud, that if he sent lenders a false

1 balance sheet, that he wouldn't be exposed, and not only would
2 he not be exposed, he would get more money. And that's exactly
3 what happened. You heard that after he sent the false balance
4 sheets, he received more than a billion dollars more in loans
5 to continue his scheme.

6 Investor fraud. Mr. Cohen said that the timing
7 doesn't match up, that the episodes in 2022 took place after
8 the defendant raised money. That's just wrong. First of all,
9 you heard about how the defendant and Ms. Ellison took FTX
10 customer money to buy out Binance. That was before the
11 fundraising. And you also heard about the countless
12 misrepresentations to FTX investors—the inflating of revenue;
13 the secret transferring of investor funds over to Alameda; the
14 deceptions on the balance sheet by moving the MobileCoin loss
15 over to Alameda so the investors wouldn't know about it; the
16 lies to auditors that kept investors from learning about
17 problems at FTX; and the lack of separation between Alameda and
18 FTX. And you heard from the two investor witnesses that that
19 type of information would have been important to them and would
20 have affected their investment decision.

21 I'm going to spend a little more time talking about
22 some of the arguments you heard, but when you go and
23 deliberate, I want you to also think about what you didn't
24 hear, what Mr. Cohen didn't say, the evidence to which he had
25 no answer. For example, Government Exhibit 5. This is a

1 spreadsheet created by the defendant where he listed the lines
2 of credit on the exchange starting with Alameda's \$65 billion
3 line of credit. Now if the defendant didn't know about
4 Alameda's \$10 billion liability to FTX until October and didn't
5 know about its giant line of credit, or how to use the
6 database, how do you explain Government Exhibit 5, a
7 spreadsheet he made that lists dozens of lines of credit coming
8 out of the database and that have the defendant's own
9 calculations showing that Alameda owed \$10 billion to the
10 exchange. The defendant has no answer, and so they said
11 nothing about it.

12 Government Exhibit 36. If the defendant didn't know
13 that Alameda was repaying its lenders with customer money, how
14 do you explain Government Exhibit 36? NAV Minus Sam Coins.
15 This is a spreadsheet from 2021 that shows that Caroline and
16 the defendant agreed in late 2021 that in the event of a market
17 crash, the only way to repay lenders would be to treat FTX
18 customer funds as their personal piggy bank. The defense has
19 no answer to Government Exhibit 36.

20 And I'll mention one more, but there are many others.

21 Government Exhibit 50. This is the spreadsheet from
22 mid-June 2022, and if the defendant didn't know about the fiat
23 liability until later and Alameda's \$10 billion negative
24 balance, how do you explain Government Exhibit 50? This is the
25 spreadsheet that Gary, Caroline, and Nishad all testified they

1 prepared at the defendant's direction and that they discussed
2 with him, and that shows in black and white that Alameda owed
3 \$10 billion. The defense has no answer.

4 So without answers to these devastating pieces of
5 evidence, the defense fell back on unsupported and increasingly
6 desperate accusations: The government is painting the
7 defendant as a monster, as a movie villain. I didn't hear
8 those words at this trial. The first time I heard them were
9 out of Mr. Cohen's mouth. The evidence about the defendant's
10 image showed you that he was a different person in public and
11 in private and that it was a performance. His romantic
12 relationship with Caroline Ellison, that was important for you
13 to understand why he chose her as his front and as his deputy.
14 His girlfriend, the person who deferred to him, a person whose
15 relationship—in that relationship, the defendant had all the
16 power.

17 And most outlandish of all was this accusation that
18 three cooperators got on that stand, that they were pressured
19 to lie, that they pled guilty to crimes they didn't commit, and
20 that they were told to falsely point the finger at the
21 defendant. That's outrageous. Each of those witnesses got on
22 that stand and they told you what they were told by the
23 government from day one—to tell the truth. And you know that
24 that's what they did.

25 Now this desperate and unsupported accusation, the

1 defense has to make it, because if you believe Caroline, the
2 defendant is guilty; and if you believe Gary, the defendant is
3 guilty; and if you believe Nishad, the defendant is guilty.
4 The cooperator testimony tells you flat out that the defendant
5 oversaw the stealing of FTX customer funds, that he knew it was
6 wrong, that he lied about it, and he took steps to hide it.

7 And I want to tell you three reasons that you know
8 those cooperators were telling the truth. Let's start with
9 their incentive. Their incentives weren't to lie. And take a
10 look at their cooperation agreements. They're in evidence.
11 This is the 3500 series. And they explain to you how these
12 cooperation agreements work. Under that agreement, they're
13 required to tell the truth. And if they don't, they're stuck
14 with their guilty pleas and facing decades in prison. They get
15 a letter from the government explaining their cooperation to
16 the judge if they tell the truth. And it's the judge who will
17 decide their sentence. And if a cooperator is caught in a lie,
18 any lie, that agreement gets ripped up.

19 I wrote this down because I was puzzled by it.
20 Mr. Cohen said that the government is treating the cooperators
21 like they had no free will. No free will? Those three
22 witnesses all pled guilty to federal felonies. They took
23 responsibility for what they did. These are not people who
24 came in and said, "I did nothing wrong, it was all Sam
25 Bankman-Fried." From their first meetings with the government,

1 they admitted to serious federal crimes, and they described how
2 they did it and who they did it with.

3 On the other hand, the defense wants you to believe
4 that none of these cooperators helped the defendant commit
5 crimes and that they all pleaded guilty even though none of
6 them actually thought they were doing anything wrong at the
7 time. Now think about that. And let's take Gary Wang as an
8 example. By this argument, Gary Wang leaves the Bahamas days
9 after FTX declares bankruptcy, less than a week later comes to
10 meet with the government, no one at that point has been charged
11 with any crimes, and he confesses to all sorts of things that
12 he didn't do. In that very first meeting, he pleads guilty to
13 a host of crimes he didn't commit, he exposes himself to
14 penalties for things he never did, and then he comes up here
15 and he lies to you. That makes no sense.

16 And you know that this is not a case of crimes in
17 hindsight. And let's just take Caroline Ellison as one
18 example. The defense said if she really thought something was
19 wrong, wouldn't she have resigned, cashed out, blown the
20 whistle? Well, she didn't do those things, and that's why
21 she's guilty of participating in a conspiracy. And she told
22 you that during the conspiracy, she did think she was doing
23 something wrong and she expressed it to the defendant. She
24 went to him as far back as 2020 and said, *What about these*
25 *auditors? Are they going to see that we're taking customer*

1 money? That would be bad. And he said, Don't worry. The
2 auditors won't see it. When he wanted to buy out Binance, she
3 said, Well, we can't do that without taking customer money.
4 And he said, Well, do it anyway. And in 2022, when he told her
5 to lie to the lenders, she told you the effect that that had on
6 her. She spent a year in dread and fear, waiting for her
7 crimes to be exposed. She cried on that stand and she told you
8 about the worst months of her life, when she knew she was
9 committing crimes and was waiting to get caught, waiting for
10 customers to realize that their money was gone.

11 And let's talk about Nishad. The defense made a big
12 deal out of the fact that he learned of the conspiracy and
13 joined it a little later. I expect Judge Kaplan is going to
14 instruct you that different people can play different roles in
15 a conspiracy. You can play a minor role, you can play a major
16 role, you can join at a different time. You're still part of
17 the conspiracy. And so it's no surprise that Nishad, who
18 didn't work at Alameda, didn't have visibility into all the
19 spending and all the use of customer money, but when he did,
20 when it sunk in, he didn't say, oh, nothing wrong going on
21 here. He confronted the defendant on that balcony. He was
22 shocked, he was blindsided, and eventually he was suicidal.
23 That is not somebody who didn't think he was doing anything
24 wrong.

25 But you don't need to take the cooperators' words for

1 it, because they were corroborated by every single other piece
2 of evidence in this case, by the testimony of other witnesses,
3 by each other's testimony. Yes, they had different lenses into
4 what was going on and different roles, but they were consistent
5 in the most important respects, that they were acting at the
6 defendant's direction, that this was his scheme, his spending,
7 his vision, and that they did what he told them.

8 And Caroline, think about her testimony. She
9 described to you what happened with the seven alternative
10 balance sheets, that she prepared that for the defendant and
11 that they discussed how to hide the borrowing from FTX
12 customers, and the metadata shows you that she was telling the
13 truth. He accessed it shortly before she sent that balance
14 sheet off to Genesis. Her contemporaneous notes matched what
15 she said, her journal entries, her Signal chats. And remember
16 the all hands meeting. That wasn't hindsight; that was before
17 she had ever met with the government, before she knew there was
18 an investigation. And go back and listen to those recordings
19 because they're consistent with what she said on the stand.
20 When she told her employees that she did this with Sam, Gary,
21 and Nishad, and that Sam directed it, she didn't think the
22 government was listening. And it's consistent with what she
23 told you in court.

24 The last thing I want you to think about when it comes
25 to the cooperators is their demeanor. I know it's been a

1 little while, but each of them got up on that stand and they
2 were the same person during their direct examination and their
3 cross. They tried to answer the questions in detailed fashion,
4 directly, in a straightforward way. They remembered specifics,
5 like where conversations happened, and documents. And then
6 think about the defendant. He was a different person on his
7 cross-examination than his direct, where he was polished and
8 knowledgeable and defining 50 terms, and suddenly on cross, he
9 couldn't remember a thing. Not only that, his story, it's
10 changed so many times, it's hard to keep track. And then think
11 about Caroline, who's been the same from that all hands meeting
12 to today.

13 Now I want you to think about what it means to accept
14 the defense's argument and what you would have to believe to
15 accept what the defense has said. You've learned in this trial
16 that Sam Bankman-Fried was a talented CEO, he was smart, he
17 went to MIT, he was ambitious, he is good at explaining things,
18 he dazzled investors and Congress and the media, and he worked
19 around the clock to build a successful business. But the
20 defense wants you to believe that this same person was clueless
21 when it came to the most fundamental, important things going on
22 at his business. He didn't know the code; he never looked at
23 the database; he knew that Alameda was accepting customer
24 deposits but he didn't bother to check where they were going;
25 he was authorizing ginormous expenditures but didn't know where

1 the money was coming from; Nishad and Gary were making dramatic
2 changes to the code and he had no clue how those features
3 really worked, even though they were his friends, his
4 roommates, and his employees; Caroline, who was just a trader,
5 when fiat deposits started going to Alameda, well, she knew
6 that Alameda was spending those deposits, but the defendant
7 dated her, he supervised her, he lived with her, but he just
8 had no idea.

9 And then think about June. The crypto markets are
10 crashing, Alameda's assets are plunging in value, Alameda maybe
11 is going bankrupt, lenders are asking for billions of dollars.
12 The defendant is trying to manage this crisis, but all the
13 while he's asking no questions. He didn't really look at the
14 spreadsheets that metadata shows he received. He didn't bother
15 asking Caroline why there were seven versions of the balance
16 sheet. He overheard that there was an \$8 billion bug in a fiat
17 account, but he didn't say, "Hey, what's that and how did it
18 get to \$8 billion?" That makes no sense. It's absurd. It's
19 inconsistent with the documentary evidence.

20 And it doesn't stop there. They want you to believe
21 that in September-October he finally just decided to run a
22 query, the first time he's ever using the database, and he sees
23 a \$10 billion liability, and this raises no alarm bells. He
24 has no real reaction. He doesn't demand answers. He doesn't
25 try to repay FTX even though he never knew about this. And he

1 just goes about his business.

2 This story not only makes no sense, it's inconsistent
3 with the testimony of every witness in this case, and you know
4 that it's a made-up story. You should reject it.

5 The defense threw around these terms, "liquidity,"
6 "solvency," and Mr. Cohen told you that the defendant acted in
7 good faith because "he always thought Alameda had sufficient
8 assets on the exchange and off the exchange to cover its
9 liabilities." That's not good faith. First of all, you saw
10 the balance sheets, and these were the same balance sheets that
11 were sent to the defendant in June, in September, in October.
12 There isn't \$40 billion of NAV; there isn't even \$10 billion of
13 NAV. And you saw the liquid assets, the same liquid assets the
14 defendant was looking at at the time. Alameda had about
15 \$500 million in its bank account and owed FTX \$13 billion. And
16 the other liquid assets, they were coins like FTT and Serum and
17 Solana. And the government's not claiming, like Mr. Cohen
18 said, that FTT is a fake coin. What you learned in this trial
19 is that it was an illiquid coin, which the defendant and
20 everybody else knew meant that you couldn't sell all those
21 coins and recover the full value on the balance sheet.

22 So the defendant saw these balance sheets and he knew
23 that Alameda did not have the assets to cover this giant debt
24 to FTX customers. But let me be clear about this. Whether
25 Alameda was liquid, solvent, had \$40 billion of coins or gold

1 bars, or just a worthless pile of junk, it doesn't matter.
2 It's a distraction. Because even if the defendant thought that
3 Alameda could sell all its assets and investments that were not
4 on the FTX exchange to repay a \$14 billion debt—which it
5 couldn't and it didn't—that wouldn't be good faith. And I'll
6 tell you why. Because when the defendant told his customers
7 that their assets were safe, that a customer had to deposit
8 collateral on to FTX to trade or borrow, that negative accounts
9 would be liquidated and that Alameda's account was just like
10 everybody else, he lied. Unlike every other customer, Alameda
11 did not post collateral, it couldn't be liquidated, and they
12 were not being evaluated by the supposedly automatic computer
13 risk engine. He lied to gain customers' trust, to get their
14 money, and then he decided the rules didn't apply to him and
15 his business. Whether or not he made good investment decisions
16 after that or it was a good business judgment to pay
17 \$300 million to meet celebrities doesn't matter, because he
18 embezzled that money in the first place after his customers
19 trusted him with it. The customers did not sign up for that.
20 They told you that. And they would not have put their money on
21 the exchange if they knew what was going on. So whether or not
22 the defendant thought he could get away with it by selling
23 assets or raising money from other investors, he thought he
24 could one day put that money back, doesn't matter. He still
25 took his customers' property based on false misrepresentations,

1 and that is fraud.

2 I want to say a quick word about Pimbley's chart,
3 Mr. Pimbley. The defense talked about that in their closing
4 statement. You should disregard that chart. You remember
5 cross-examination. Mr. Pimbley couldn't tell you why he looked
6 at certain numbers, what the significance of the numbers were,
7 what the relevance was to this case. He just ran a query in a
8 database and did no analysis whatsoever. And when he was
9 cross-examined, he admitted that those numbers he used made
10 Alameda's debts look lower because he did not include the fiat
11 liability and he had included some accounts that were full of
12 Sam coins, like FTT.

13 If you want to know the full story, look at Government
14 Exhibit 1002. That chart shows all of Alameda's balances and
15 gives you a better picture of the defendant's actual use of
16 customer money. And look at Government Exhibit 5 if you want
17 to know what the defendant knew, because that's the defendant's
18 own chart showing that Alameda owed negative \$5 billion to FTX
19 and owed \$10 billion if you excluded the FTT and venture
20 accounts.

21 One quick thing on this risk officer point. The
22 defense made a big deal that FTX did not have a chief risk
23 officer. That's not a defense. That was a strategy. If
24 you're deleting messages and backdating documents and
25 embezzling customer money, of course you're not going to hire a

1 risk officer. And the defendant didn't need a chief risk
2 officer to tell him that stealing customer money was wrong.
3 You can't go into a jewelry store, steal a diamond necklace,
4 walk out, and then say, there was no security guard. The
5 defendant knew what he was doing was wrong, and that's why he
6 never hired a risk officer.

7 Before I conclude, I want to make something else very
8 clear, and leave you with this thought. Even if you accept
9 everything the defendant said on the stand, which you
10 shouldn't, he is still guilty of fraud. The defense doesn't
11 dispute that by September or October, the defendant knows about
12 Alameda's massive liability to FTX customers; he knows that
13 they've spent customer fiat funds; he knows they have borrowed
14 billions of dollars from customers, outside the normal rules of
15 the exchange; he knows the state of Alameda's balance sheet,
16 he's been reviewing it; he knows that they have barely any
17 money in bank accounts and a bunch of illiquid tokens and
18 investments that are not on the FTX exchange. And so you know
19 that he directed this fraud, that he was the hub. But even if
20 you accept what he is saying, he wasn't a member of the
21 conspiracy before then, he became a member of the conspiracy at
22 that point in time. The defense wants you to think that the
23 government has to prove that this was a giant fraud from day
24 one and that this was the defendant's plan all along. We
25 don't. Now the evidence shows that—the evidence shows that

1 over time, the defendant exploited FTX to take more and more
2 customer funds for his own spending, that he directed the
3 features in the code, that he directed the use of fiat
4 deposits, but even if you find that it wasn't until September
5 or October that he had the full picture, at that point he knows
6 what's going on and he agrees to help the plan succeed, by
7 covering it up, by trying to raise money in the Middle East to
8 fill the hole, and conceal what's going on, and by lying to
9 customers throughout September and October, publicly, in the
10 media, on Twitter, about the safety of the exchange and the
11 safety of their assets, all while he knows that there's this
12 giant, massive, unrepayable hole.

13 I expect Judge Kaplan is going to instruct you about a
14 concept called conscious avoidance. And that means if the
15 defendant deliberately closes his eyes to what otherwise would
16 have been obvious, or if he's aware of a high probability of a
17 fact but intentionally avoids confirming it, he is still acting
18 knowingly under the law. And according to the defendant's own
19 testimony, that's what he did here. He knew Alameda was
20 receiving customer deposits. He was CEO at the time, and he
21 permitted employees to use that money. He put in place no
22 restrictions, no policies to safeguard that money, to prevent
23 stealing, and he turned the other way and spent billions of
24 dollars without really asking where that money was coming from.
25 He directed changes to the code that he knew would treat

1 Alameda differently from everybody else, but then he didn't
2 really ask any questions. And when he overheard in June,
3 according to him, that there was an \$8 billion bug in the fiat
4 account, he didn't say, "Hey, what's that?" Instead of getting
5 to the bottom of why Alameda owed billions of dollars in an
6 account called fiat, that's conscious avoidance. Even if you
7 believe every word of that unbelievable story, that is
8 conscious avoidance and he is guilty.

9 Let's talk about November, because at that point in
10 time, the defendant indisputably demonstrated that he was a
11 member of an illegal conspiracy and he had wrongful intent. I
12 expect Judge Kaplan is going to instruct you that a single
13 act—one act—may be sufficient to draw a person into a
14 criminal conspiracy. Now the defendant, he committed countless
15 acts—false statements, deception, embezzlement, use of
16 customer funds, directing changes to the code, directing false
17 balance sheets—but one act in furtherance of the conspiracy is
18 enough.

19 And so when November rolls around, and the defense
20 admits the defendant at this time knew the state of affairs—he
21 knew about the borrowing; he knew that Alameda had not been
22 liquidated; he knew that Alameda had spent the customer fiat
23 deposits; he didn't tell customers the truth; he took steps to
24 continue the scheme; he lied to customers; he lied to keep
25 their money, to prevent withdrawals, to hide what happened. He

1 helped Caroline, for example, write a misleading tweet—that's
2 Government Exhibit 875—saying that Alameda's balance sheet was
3 secure because they had repaid all their loans. Repaid all
4 their loans? They owed FTX \$10 billion.

5 And then he tweeted himself. This is not the
6 government's favorite piece of evidence. I don't know if that
7 joke was meant to distract, but this is a significant piece of
8 evidence, and you should take it seriously, because when the
9 defendant said FTX had enough to cover all client holdings,
10 that was a lie. And the defendant himself admitted that that
11 statement, he was taking into account Alameda's balance sheet,
12 the company he told the public was walled off and separate, and
13 he was taking into account assets that were illiquid and that
14 were not on the FTX exchange. FTX did not have enough to cover
15 all client holdings.

16 And just look at Government Exhibit 21, where at the
17 same time in private he's saying, *We have one third of the*
18 *money to cover what client assets should be.*

19 So that tweet alone shows that he joined the
20 conspiracy, he took an act in furtherance of it, to prevent
21 customer withdrawals, and he lied over and over again.

22 The defense said that the fact that he deleted this
23 tweet somehow shows that he had good faith. Give me a break.
24 On November 7 he thought he could still fool the world. He
25 thought that if he lied to customers, maybe they wouldn't

1 withdraw their money. And when he deletes the tweet, it's
2 because the curtain has been pulled back. The world at that
3 point knows the money's not there. He's destroying evidence.
4 He's deleting evidence of his lies.

5 And then the defendant went and made false statements
6 to the press, and that's when he thought he would never be
7 caught, that his messages had been deleted, that his
8 fingerprints were not on the code, and that his deniability was
9 airtight.

10 (Continued on next page)

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1 MS. SASSOON: He went on Good Morning America for the
2 same reason he sent a confident tweet thread, because he
3 thought he could fool his customers, reporters, the public, and
4 now you. Don't fall for it. You know better.

5 When the defendant sent that false tweet, when he lied
6 to the public, he didn't bargain for the metadata or Caroline's
7 journals or the complicated tracing of crypto and dollar money
8 movements that show when and how he took the money and where he
9 spent it. He didn't bargain for his three loyal deputies
10 taking that stand and telling you the truth, that he was the
11 one with the plan, the motive, and the greed to raid FTX
12 customer deposits, billions and billions of dollars to give
13 himself money, power, influence. He thought the rules did not
14 apply to him. He thought that he could get away with it. But
15 his crimes caught up to him. His crimes have been exposed.

16 It's time to deliberate without fear, favor, sympathy,
17 or prejudice. You sat through this trial. You know what
18 happened. Find him guilty.

19 THE COURT: Thank you, counsel. We will take 15
20 minutes.

21 (Recess)

22 (Pages 3139-3141 SEALED)

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25

1 THE DEPUTY CLERK: An announcement to the spectators.

2 The Court is about to charge the jury. All spectators must
3 either remain seated throughout the duration of the charge or
4 leave at this time.

5 Marshal, please lock the door.

6 (Jury present)

7 THE COURT: The defendant and the jurors all are
8 present.

9 Members of the jury, you are about to perform your
10 final function as jurors. My instructions to you are going to
11 be in four parts. I will start by describing the law to be
12 applied to the facts as you find the facts to have been
13 established by the proof. I will then instruct you about the
14 trial process, give you instructions concerning your evaluation
15 of the evidence, and, finally, talk to you about the conduct of
16 your deliberations.

17 Now, you are free to take notes, but I want you to
18 understand that the charge will be given to each of you in
19 writing when you retire to deliberate, so that you will have it
20 for reference during your deliberations, and the law simply
21 requires that I deliver it orally as well.

22 The defendant, as you now know, is Samuel
23 Bankman-Fried. He has been formally charged in a document
24 called an indictment. The indictment is, as I told you at the
25 beginning of the trial, simply an accusation. It's not

1 evidence. It's not proof of the defendant's guilt. It doesn't
2 create any presumption or permit any inference that the
3 defendant is guilty of any of the charges.

4 You will have a copy of the relevant parts of the
5 indictment in the jury room for your reference.

6 Each part of the indictment or, to be more precise,
7 each count of the indictment charges a different crime. You
8 must consider each count separately and return a separate
9 verdict of guilty or not guilty for each of the counts. Except
10 in one respect that I'll explain to you a little bit later on
11 when I discuss Count Seven, your verdict on one count should
12 not control your decision as to any other count.

13 I am now going to describe the counts in the
14 indictment.

15 Count One charges the defendant with committing wire
16 fraud on customers of FTX by misappropriating customer
17 deposits.

18 Count Two charges the defendant with conspiring to
19 commit wire fraud on customers of FTX by misappropriating
20 customer deposits.

21 Count Three charges the defendant with committing wire
22 fraud on lenders to Alameda Research by providing false and
23 misleading information to those lenders. For convenience, I am
24 going to refer to Alameda Research from time to time simply as
25 Alameda, but you should understand that when I say Alameda or

1 Alameda Research, I am talking about the same thing, and they
2 are the entity or entities as to which you heard evidence -- I
3 guess it's one entity, I want to be clear -- that was owned 90
4 percent by the defendant.

5 Count Four charges the defendant with conspiring to
6 commit wire fraud on lenders to Alameda by providing false and
7 misleading information to those lenders.

8 Count Five charges the defendant with conspiring to
9 commit securities fraud by providing false and misleading
10 information to FTX's investors.

11 Count Six charges the defendant with conspiring to
12 commit fraud on customers of FTX in connection with the
13 purchase and sale of cryptocurrency and cryptocurrency swaps by
14 misappropriating those customers' deposits.

15 Count Seven charges the defendant with conspiring to
16 commit money laundering in order to conceal and disguise the
17 nature, location, source, ownership, and control of proceeds of
18 the alleged fraud on FTX's customers.

19 Now, the defendant has pleaded not guilty to all the
20 charges in the indictment. The burden is on the prosecution to
21 prove guilt beyond a reasonable doubt. That burden never
22 shifts to the defendant. He is presumed innocent of the
23 charges against him, and I therefore instruct you that he is
24 presumed innocent throughout your deliberations unless and
25 until such time, if such a time ever occurs, that you as a jury

1 are satisfied that the government has proved him guilty beyond
2 a reasonable doubt. If the government fails to sustain its
3 burden of proof on one or more counts, you must find the
4 defendant not guilty on that count or counts.

5 I have said that the government must prove guilt
6 beyond a reasonable doubt. What's a reasonable doubt? It's a
7 doubt based on reason and common sense. It's a doubt that a
8 reasonable person has after carefully weighing all of the
9 evidence or lack of evidence. It is a doubt that would cause a
10 reasonable person to hesitate to act in a matter of importance
11 in his or her personal life. Proof beyond a reasonable doubt,
12 therefore, is proof of such a convincing character that a
13 reasonable person would not hesitate to rely and act upon it in
14 the most important of his or her own affairs.

15 If, after a fair and impartial consideration of all of
16 the evidence, you have a reasonable doubt about the defendant's
17 guilt with respect to a charge in the indictment, it is your
18 duty to find him not guilty on that charge. On the other hand,
19 if after fair and impartial consideration of all the evidence
20 or lack of evidence, you are satisfied of the defendant's guilt
21 on a particular charge beyond a reasonable doubt, you should
22 vote to convict on that charge.

23 Let me talk in a little bit more detail about the
24 indictment. As I have told you, Counts Two, Four, Five, Six,
25 and Seven each charge the defendant with a different crime of

1 conspiracy. The other two counts, Counts One and Three, charge
2 what we call substantive crimes. I talked about that a little
3 bit before we finished jury selection, but now I'll give you
4 the full and dispositive and binding explanation of the
5 difference.

6 A conspiracy count is different from a substantive
7 count. A conspiracy charge, generally speaking, alleges that
8 two or more persons agreed together to accomplish an unlawful
9 objective. The focus of a conspiracy count, therefore, is on
10 whether there was an unlawful agreement. A substantive count,
11 on the other hand, charges a defendant with the responsibility
12 of the actual commission of a crime or an offense. A
13 substantive offense therefore may be committed by a single
14 person, and it need not involve an agreement with a second or
15 more other persons.

16 A conspiracy to commit a crime is an entirely separate
17 and different offense from a substantive crime, the commission
18 of which may be an object or a purpose of the conspiracy. And
19 since the essence of the crime of conspiracy is an agreement or
20 an understanding to commit a crime, it doesn't matter if the
21 crime, the commission of which was an objective or a purpose of
22 the conspiracy, ever in fact was committed. In other words, if
23 a conspiracy exists and certain other requirements are met, it
24 is punishable as a crime even if its purpose was not
25 accomplished. Consequently, in a conspiracy charge there is no

1 need to prove that the crime or crimes that were the objective
2 or the objectives of the conspiracy actually were committed.

3 By contrast, conviction on a substantive count
4 requires proof that the crime charged actually was committed,
5 and it doesn't require proof of an agreement.

6 Now, with respect to the two substantive counts,
7 Counts One and Three, you should be aware also that there are
8 three alternative theories on the basis of which you may find a
9 defendant guilty. I am going to explain all three theories in
10 more detail, but I want to just outline them briefly before I
11 get into the more detailed explanation.

12 The first theory is that the defendant himself
13 committed a substantive crime charged in one of those two
14 substantive counts. The second theory is that the defendant,
15 with criminal intent, willfully caused some somebody else to
16 engage in certain actions that result in the commission of a
17 substantive crime charged in the indictment by that other
18 person. I am going to refer, just for the sake of having a
19 shorthand for those two theories that I just outlined for you,
20 as it involving a claim that a defendant is guilty of a crime
21 as a principal.

22 The third theory is that somebody other than the
23 defendant committed a crime charged in the indictment as a
24 substantive offense, and that the defendant aided and abetted
25 in the commission of that crime. I am going to refer to that

1 theory as a claim that the defendant is guilty as an aider and
2 abettor.

3 For the sake of organizing my instructions to you in a
4 convenient way, I am going to instruct you first with respect
5 to Counts One and Three, which are the two counts that charge
6 substantive crimes. I will then instruct you on the first two
7 theories of liability, namely, that the defendant is guilty as
8 a principal of those crimes charged, either because he
9 committed those crimes himself or because with criminal intent
10 he caused somebody else to commit those crimes. I then will
11 instruct you on the aiding and abetting theory. Then I'll turn
12 to the conspiracy counts, which don't involve these three
13 alternative theories.

14 Now, Count One charges that: From at least in or
15 about 2019, up to and including in or about November 2022, the
16 defendant participated in a scheme to defraud customers of FTX
17 of money and property by making, or causing to be made,
18 material false representations, using interstate or
19 international wires, for the purpose of paying expenses and
20 debts of Alameda or to make investments and for other reasons.

21 When I pause like this, I'm fixing typos.

22 Count Three charges that: From at least in or about
23 June 2022, up to and including in or about November 2022, the
24 defendant participated in a scheme to defraud lenders to
25 Alameda of money and property by making, or causing to be made,

1 material misrepresentations regarding Alameda's financial
2 conditions, using interstate or international wires, so that
3 those lenders would not recall existing loans or would extend
4 new loans to Alameda.

5 With any criminal charge there are certain basic facts
6 that the government must prove beyond a reasonable doubt before
7 a defendant may be found guilty. Those basic, necessary facts
8 are called the essential elements of the charge.

9 For each of Count One and Count Three, the government
10 must prove the following three elements beyond a reasonable
11 doubt:

12 First, that the defendant employed a scheme, device,
13 or artifice to defraud or obtained money or property by false
14 pretensions, representations or promises.

15 Second, that the defendant knowingly and willfully
16 participated in the scheme, device, or artifice was to defraud
17 with knowledge of its fraudulent nature and with specific
18 intent to defraud; and

19 Third, in the discussion of that device, scheme or
20 artifice to defraud, the defendant used, or caused to be used,
21 interstate or international wires (for example, phone calls,
22 email communications, or electronic trades).

23 The first element that the government has to prove
24 beyond a reasonable doubt, and this is true of both Counts One
25 and Three -- excuse me. Strike "this is true of Counts One and

1 Three" and disregard that.

2 The first element that the government must prove
3 beyond a reasonable doubt is the existence of a device, scheme
4 or artifice to defraud the alleged victims of money or property
5 by false or fraudulent pretenses, representations, or promises.
6 In Count One, the victims alleged are the customers of FTX. In
7 Count Three, the alleged victims are lenders to Alameda.
8 Unless I instruct you otherwise, the instructions on the
9 elements that the government has to prove beyond a reasonable
10 doubt to establish wire fraud are exactly the same on Count One
11 and Count Three. What's different is the alleged victims.
12 Count One the victims are FTX customers; Count Three, Alameda
13 lenders.

14 Now let me define some of the terms relating to wire
15 fraud that I've already used.

16 Fraud is a general term. It is a term that includes
17 all the possible means by which a person seeks to gain some
18 unfair advantage over a victim by intentional misrepresentation
19 or false pretenses.

20 A device, scheme, or artifice to defraud is any plan,
21 device, or course of action to deprive another of money or
22 property by means of false or fraudulent pretenses,
23 representations, or promises. It is, in other words, a plan to
24 deprive another person of money or property by trick, deceit,
25 deception, swindle, or overreaching.

1 Money or property includes fiat currency, such as U.S.
2 dollars or British pounds or other foreign currency. It also
3 includes cryptocurrencies.

4 A statement or representation is false if it's untrue
5 when it's made. A statement may be false also if it is
6 ambiguous or incomplete in a manner that makes what is said or
7 represented misleading or deceptive. A representation is
8 fraudulent if it was made falsely and with intent to deceive.

9 A false or fraudulent statement, representation,
10 promise, or pretense must relate to a material fact or matter.
11 A material fact is one that would be expected to influence, or
12 that is capable of influencing, the decision of a reasonable
13 person. The same principle applies to fraudulent
14 misappropriation, which I am going to discuss in just a moment.

15 Now, as is pertinent here with respect to the alleged
16 wire fraud on customers of FTX, a scheme to defraud existed if
17 the government has proved beyond a reasonable doubt that the
18 defendant fraudulently embezzled or misappropriated property
19 belonging to another. The words embezzle and misappropriate
20 mean the fraudulent misappropriation to one's use of money or
21 property that was entrusted to one's care by someone else and
22 with whom that person stood in a relation, implying and
23 necessitating great confidence and trust. Money or property is
24 entrusted to the defendant's care when the business that the
25 defendant transacted or the money or property that the

1 defendant handled was not the defendant's own or for the
2 defendant's own benefit, but for the benefit of another person
3 as to whom the defendant stood in a relation implying and
4 necessitating great confidence and trust.

5 Now, such a relationship cannot be based solely on
6 unilateral, subjective expectations of FTX customers. Rather,
7 your judgment as to whether the government has proved such a
8 relationship should take into account all of the evidence
9 concerning the relationships between and among the defendant,
10 FTX, and FTX's customers. That evidence may include public FTX
11 policies, public statements and representations by the company,
12 or by the defendant, tweets and other electronic
13 communications, the FTX terms of service, and any other
14 circumstances pertinent to whether the government has proved
15 such a relationship.

16 As far as the terms of service are concerned, I need
17 to make a number of points about them.

18 If you don't mind, I am going to stand, not because of
19 any special emphasis, but because I need to stand once in a
20 while. If you feel likewise, feel free.

21 Let me make sure I can be heard.

22 First of all, my recollection is that there is only
23 one version of the FTX terms of service in evidence. It's
24 Government Exhibit 558. And the evidence, as I recall it, is
25 that it went into effect in May 2022. While there was

1 reference in the testimony to earlier versions of FTX terms of
2 service, none of those was received in evidence. There is
3 evidence also that a prospective customer had to click a box
4 that said, and I think I quoted accurately, I agree to the FTX
5 terms of service in order to open an account. Government
6 Exhibit 587 is said to be a screenshot of the web page on which
7 a prospective customer was presented with the check box next to
8 the statement, I agree to the FTX terms of service. Now,
9 mechanisms like this, in other words, where a customer has to
10 click a box on a website stating something to the effect of, I
11 agree to the terms of service in order to get access to
12 services or goods and does click the box, are often called
13 clickwrap agreements.

14 The second point I need to make about the terms of
15 service is that a clickwrap agreement is a civilly enforceable
16 contract of the terms of service that were reasonably
17 conspicuous to the prospective customer, which is often a
18 function of the design and the content of the relevant computer
19 interface. If the terms of service were reasonably
20 conspicuous, the prospective customer, as a matter of the civil
21 law of contracts, is bound by those terms of service -- excuse
22 me -- terms and conditions, terms of service, when he or she
23 clicks I agree, regardless of whether he or she ever read the
24 terms of service, as long as a reasonably prudent user would
25 see that next to the box appears text saying I agree in the

1 check box, and there is highlighted and underlined indications
2 that I suspect everybody is familiar with and that a reasonably
3 prudent user would understand that the page is hyperlinked to
4 another web page where the terms of service would be found. In
5 considering whether a statement or omission is material, let me
6 caution you that a clause in a contract or a disclaimer cannot
7 render any misrepresentation, including any oral
8 misrepresentation, immaterial as a matter of law.

9 The third point is that, insofar as Count One is
10 concerned, this, of course, is a criminal wire fraud case. It
11 is not a civil case for breach of contract. In order to decide
12 whether the defendant misappropriated or embezzled to his own
13 use money or property of FTX customers, you first need to
14 determine whether the relationship between the defendant and
15 those customers was one implying and necessitating great
16 confidence and trust. In doing so, you should, as I have said,
17 consider all of the evidence concerning the relationships
18 between and among the defendant, FTX, and FTX's customers, not
19 simply the terms of service alone. And if the government has
20 proved such a relationship of trust and confidence, you must
21 determine whether or not the government has proved beyond a
22 reasonable doubt that FTX customers were materially deceived or
23 misled to entrust their money and property to FTX whenever they
24 did so or to leave it there. Misappropriation of property is
25 material if the disclosure of the misappropriation would be

1 expected to influence or is capable of influencing the decision
2 of a reasonable person.

3 Now, you have heard evidence that after customers and
4 lenders transferred money to FTX and Alameda Research, the
5 defendant engaged in conduct, made tweets and other public
6 statements and provided financial information, which the
7 government claims were false or misleading. It is not
8 necessary for the government to prove that a false or
9 misleading -- excuse me -- false or fraudulent representation
10 or statement was made prior to a customer's or lender's
11 decision to part with money or property. Rather, if after
12 having obtained money or property, the defendant devised or
13 participated in a fraudulent scheme to deprive the alleged
14 victim of that money or property by keeping the money or
15 property through making a subsequent false or fraudulent
16 misrepresentation as to a material fact, that is sufficient to
17 establish the existence of a scheme to defraud. It is not
18 necessary for the government to prove that the scheme to
19 defraud actually succeeded, that any particular person actually
20 relied on a statement or representation, or that any victim
21 actually suffered damages as a consequence of any false or
22 fraudulent representations, promises, or pretenses. Nor do you
23 need to find that the defendant profited from the fraud or
24 realized any gain. You must concentrate on whether there was
25 such a scheme, not the consequences of the scheme, although

1 proof concerning accomplishment of the goals of the scheme may
2 be persuasive evidence of the existence of the scheme itself.

3 In determining whether a scheme to defraud existed, it
4 is irrelevant whether a victim might have discovered the fraud
5 if the victim had looked more closely or probed more
6 extensively. A victim's negligence or gullibility in failing
7 to discover a fraudulent scheme is not a defense to wire fraud.
8 On the other hand, a finding that a victim intentionally turned
9 a blind eye to certain types of representations when making
10 decisions about the victim's money or property may be relevant
11 to the materiality of the representations.

12 Finally, the government, in order to satisfy this
13 first element of substantive wire fraud, must prove beyond a
14 reasonable doubt that the alleged scheme contemplated depriving
15 the victims, that is, the customers of FTX, in the case of
16 Count One, and the lenders to Alameda, in the case of Count
17 Three, of money or property.

18 A scheme to defraud need not be shown by direct
19 evidence. It may be established by all the circumstances and
20 facts of the case.

21 The second element that the government must prove
22 beyond a reasonable doubt to establish the substantive crime of
23 wire fraud is that the defendant knowingly and willfully
24 participated in the device, scheme, or artifice to defraud,
25 with knowledge of its fraudulent nature and with specific

1 intent to defraud.

2 To act knowingly means to act intentionally and
3 voluntarily, and not because of ignorance, mistake, accident,
4 or carelessness.

5 To act willfully means to act voluntarily and with
6 wrongful purpose.

7 Unlawfully means simply contrary to law. In order to
8 know of an unlawful purpose, the defendant does not have to have
9 known that he was breaking any particular law or any particular
10 rule. He need to have been aware only of the generally
11 unlawful nature of his actions.

12 To prove that the defendant acted with specific intent
13 and defraud, the government must prove that he acted with
14 intent to deceive for the purpose of depriving the relevant
15 victim of money or property. The government need not prove
16 that the victim actually was harmed, only that the defendant
17 contemplated some actual harm or injury to the victim in
18 question. In addition, the government doesn't need to prove
19 that the intent to defraud was the only intent of the
20 defendant. A defendant may have the requisite intent to
21 defraud even if the defendant was motivated by other lawful
22 purposes as well.

23 To participate in a scheme means to engage in it by
24 taking some affirmative step to help it succeed. Merely
25 associating with people who were participating in a scheme,

1 even if the defendant knew what they were doing, is not
2 participation.

3 It is not necessary for the government to establish
4 that the defendant originated the scheme to defraud. It is
5 sufficient if you find that there was a scheme to defraud, even
6 if somebody else originated it, and that the defendant, while
7 aware of the existence of the scheme, knowingly and willfully
8 participated in it with the intent to defraud.

9 Nor is it required that the defendant have
10 participated in or have had knowledge of all of the operations
11 of the scheme. The responsibility of the defendant is not
12 governed by the extent of his participation. For example, it
13 is not necessary that the defendant have participated in the
14 alleged scheme from the beginning. A person who comes in at a
15 later point with knowledge of the scheme's general operation,
16 although not necessarily all of its details, and intentionally
17 acts in a way to further the unlawful goals, becomes a
18 participant in the scheme and is legally responsible for all
19 that may have been done in the past in furtherance of the
20 criminal objective and all that is done thereafter.

21 Even if the defendant participated in the scheme to a
22 lesser degree than others, he nevertheless is equally guilty as
23 long as he knowingly and willfully participated in the alleged
24 scheme to defraud with knowledge of its general scope and
25 purpose and with specific intent to defraud.

1 Because an essential element of the crime charged is
2 intent to defraud, it follows that good faith on the part of a
3 defendant is a complete defense to the charge of wire fraud.
4 Good faith is an honest belief by the defendant that his
5 conduct was not wrongfully intended. An honest belief in the
6 truth of the representations made or caused to be made by a
7 defendant is a complete defense, however inaccurate the
8 statements may turn out to be. Similarly, it is a complete
9 defense if a defendant held an honest belief that the victims
10 were not being deprived of money or property. Moreover, a
11 defendant that doesn't have any burden to establish a defense
12 of good faith, it's always the government's burden to prove
13 fraudulent intent and the consequent lack of good faith beyond
14 a reasonable doubt. However, in considering whether or not a
15 defendant acted in good faith, you are instructed that an
16 honest belief on the part of the defendant, if such a belief
17 existed, that ultimately everything would work out to the
18 benefit of the alleged victims does not necessarily mean that
19 the defendant acted in good faith. If the defendant knowingly
20 and willfully participated in the scheme with the intent to
21 deceive the victim or victims in question for the purpose of
22 depriving the victim or victims of money or property, even if
23 only for a period of time, then no amount of honest belief on
24 the part of the defendant that the victim ultimately would be
25 benefited will excuse false representations that a defendant

1 willfully made or caused to be made.

2 As I instructed you previously, it is the government's
3 burden to prove beyond a reasonable doubt that the defendant
4 had a fraudulent intent and that he engaged in a fraudulent
5 scheme for the purpose of causing some loss to another.

6 All of that said, you have heard evidence that FTX and
7 Alameda had lawyers. A lawyer's involvement with an
8 individual, entity -- an individual or entity or transaction
9 doesn't itself constitute a defense to any charge in this case.
10 The defense has not claimed, and it cannot claim, that the
11 defendant's allegedly unlawful conduct, assuming he committed
12 any unlawful conduct, was lawful because he engaged in such
13 conduct in good-faith reliance on the advice of a lawyer.

14 In the last analysis, whether a person acted
15 knowingly, willfully, and with intent to defraud is a question
16 of fact. It is for you to determine, like any other fact
17 question. Direct proof of knowledge and fraudulent intent is
18 never or almost never available, nor is it required. It would
19 be a very rare case where it could be shown that a person wrote
20 or stated that as of a given time in the past he or she
21 committed an act with fraudulent intent.

22 The ultimate facts of knowledge and criminal intent,
23 though subjective, may be established by circumstantial
24 evidence, based upon a person's outward manifestations, his or
25 her words, his or her conduct, his or her acts, and all the

surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from that evidence. You may, but you are not required, to infer that people intend the natural and probable consequences of their actions. Accordingly, when the necessary result of a scheme is to injure others, fraudulent intent may be inferred from the scheme itself. As I instructed earlier, circumstantial evidence, if believed, and I'll talk about circumstantial evidence later on, is of no less value than direct evidence.

The third and final element that the government must prove beyond a reasonable doubt is that one or more foreign wires, which I have also referred to as international wires, same thing, were used in furtherance of the scheme to defraud. An interstate wire means a wire that passes between two or more states. A foreign wire means a wire that travels between the United States and another country. Examples of wires include telephone calls, text messages, communications over the Internet, commercials on television, and financial wires between bank accounts, among other things.

A wire communication need not be fraudulent. It must, however, further or assist in some way in carrying out the scheme to defraud in order to satisfy this third element. A wire communication can also include a communication made after an alleged victim's funds were obtained if the communication was designed to lull the victim into a false sense of security,

1 to postpone the victim from complaining to the authorities, or
2 to keep money obtained in the scheme.

3 It is not necessary for the defendant to have been
4 directly or personally involved in a wire communication, as
5 long as the wire was reasonably foreseeable in the execution of
6 the alleged scheme to defraud in which the defendant is accused
7 of participating. In this regard, it is sufficient to
8 establish this third element of the crime if the evidence
9 justifies a finding that the defendant caused a wire to be used
10 by another. This does not mean that the defendant must
11 specifically have authorized others to make the communication
12 or communications. When one does an act with knowledge that
13 the use of the wires will follow in the ordinary course of
14 business or where such use of wires reasonably can be foreseen,
15 even if not specifically or actually intended, then a person
16 causes the wires to be used.

17 Finally, if you find that a wire communication was
18 reasonably foreseeable and that the interstate or foreign wire
19 communication charged in the indictment took place, then this
20 element is satisfied even if it was not foreseeable that the
21 communication would cross state lines or the United States
22 border.

23 That takes care of the first of the three theories on
24 which the government could theoretically convict the defendant
25 on Count One and/or Count Three.

1 Now, if you unanimously find that the government has
2 proved the defendant guilty of both Counts One and Three under
3 that first theory of liability that I just finished explaining,
4 in other words, if you find that the government has proved that
5 the defendant himself committed the substantive crimes charged
6 in Counts One and Three, then you don't need to consider the
7 government's second and third theories of liability on either
8 one of those counts.

9 I have to tell you about them anyway.

10 If, on the other hand, you do not so find as to either
11 or both of Count One or Count Three, then you will consider the
12 government's second alternative theory of liability, namely,
13 that the defendant is guilty of the relevant conduct or counts
14 because he allegedly possessed the requisite criminal intent
15 and he willfully caused someone else to engage in actions
16 necessary to commit the crime or crimes. I am now going to
17 take a moment, I promise, to discuss what it means for a
18 defendant to be guilty as a principal through willful causation
19 in the context of this case.

20 Whoever willfully causes an act to be done which, if
21 directly done by the defendant, would be an offense against the
22 United States, it is punishable as a principal.

23 What does the term willfully caused mean? It doesn't
24 mean that the defendant need physically have committed the
25 crime or supervised or participated in the actual criminal

1 conduct charged in the indictment. Rather, anybody who causes
2 the doing of an act, which that person, had he done so directly
3 himself, would render him guilty of an offense against the
4 United States, is guilty as a principal. Accordingly, one who
5 intentionally causes another person to make a material false
6 statement in connection with depriving a victim of money or
7 property is guilty as a principal if the government proves that
8 the person who causes the making of the false statement acted
9 knowingly, willfully, and with the specific intent to defraud
10 the victim in question and satisfies the other elements of wire
11 fraud that I have described to you. That is so even if the
12 individual who was caused to make the false statement did so
13 without criminal intent.

14 Now, if you unanimously find that the government has
15 proved the defendant guilty beyond a reasonable doubt of both
16 of Count One and Count Three, under either of the first or the
17 second theory of liability that I have just finished explaining
18 to you, then you don't need to consider the government's third
19 theory of liability, but I need to tell you about it anyway,
20 just in case. And I don't mean anything by just in case. It's
21 just a note of humor. At least I hope so.

22 If you do not convict the defendant of Count One or
23 Count Three or both counts under either of the first two
24 theories of liability, then you must consider whether the
25 government has proved him guilty on the third theory, which is

1 called aiding and abetting.

2 I will explain that to you in a little more detail.

3 It is unlawful for someone to aid, abet, counsel,
4 command, induce, or procure someone else to commit an offense.
5 A person who does that is just as guilty of the offense as
6 someone who actually commits the offense himself or herself.
7 Accordingly, for either of the two substantive counts in the
8 indictment, you may find the defendant guilty if you find that
9 the government has proved on that count beyond a reasonable
10 doubt that someone else actually committed the crime and that
11 the defendant aided, abetted, counseled, commanded, induced, or
12 procured the commission of that crime.

13 In order to convict the defendant as an aider and
14 abettor, the government must prove beyond a reasonable doubt
15 two elements.

16 First, it must prove that someone other than the
17 defendant (and other than a person that the defendant willfully
18 caused to commit the crime, as I described that to you
19 previously) committed the crime charged. The reason is
20 obviously this. No one can be convicted of aiding or abetting
21 the criminal act of some other person if nobody committed the
22 crime in the first place. Accordingly, if the government has
23 not proved beyond a reasonable doubt that someone other than
24 the defendant committed the substantive crime or crimes in the
25 indictment, then you don't have to consider the second element

of aiding and abetting. But if you do find that a crime was committed by someone other than the defendant, or someone he willfully caused to take the actions necessary for the commission of the crime, then you must consider whether the defendant aided or abetted the commission of that crime and, therefore, whether the government has proved the second element of aiding and abetting, which requires the government to prove that the defendant willfully and knowingly associated himself in some way with the crime and that he willfully and knowingly engaged in some affirmative conduct or some overt act for the specific purpose of bringing about the crime. Participation in a crime is willful if it is done voluntarily and intentionally, with the specific intent to do something that the law prohibits.

The mere presence of the defendant in a place where a crime is being committed, even with knowledge that a crime is being committed, is not enough to make the defendant an aider and abettor. Similarly, a defendant's acquiescence in criminal conduct of others, even with guilty knowledge, is not enough to establish aiding and abetting. An aider or abettor must know that the crime is being committed and act in a way which is intended to bring about the success of the criminal venture.

To determine whether a defendant aided and abetted in the commission of a crime, ask yourself these questions:

Did the defendant knowingly associate himself with the

1 criminal venture? Did he by his actions make the crime or the
2 criminal venture succeed? And did the defendant participate in
3 the crime charged as something he wished to bring about? And
4 if he did, then he's an aider and abettor. If, on the other
5 hand, your answer to any one of those three questions I just
6 posed is no, the defendant is not an aider or abettor. I
7 certainly understand, depending on your view of the evidence,
8 that there may be a very subtle distinction with respect to
9 whether a defendant is guilty, if he's guilty at all, as a
10 principal or as an aider and abettor. The question is what is
11 the difference between a defendant willfully causing someone
12 else to take actions necessary for the commission of a crime,
13 as opposed to aiding and abetting someone else in committing
14 the crime.

15 If this question should come up in your deliberations,
16 you should think of it in terms of the difference between
17 causing someone to do something versus facilitating or helping
18 someone to do it. If you are persuaded beyond a reasonable
19 doubt that the defendant willfully caused someone else to take
20 actions necessary for the commission of either of the
21 substantive counts charged in the indictment, you should
22 convict him as a principal on that count. If, on the other
23 hand, you are persuaded beyond a reasonable doubt that the
24 defendant, with knowledge and intent, as I have described as
25 necessary, sought by his actions to facilitate and assist that

1 other person in committing the crime, then he's guilty as an
2 aider and abettor. One important difference between willfully
3 causing and aiding another person and abetting another person
4 to commit a crime is that with respect to willful causation,
5 the government need not prove that the defendant acted through
6 a guilty person.

7 With respect to aiding and abetting, however, the
8 government must prove beyond a reasonable doubt that someone
9 else actually committed the crime charged with the requisite
10 criminal intent.

11 If you find that the government has proved beyond a
12 reasonable doubt that another person actually committed one or
13 more of the substantive crimes charged in the indictment, just
14 a reminder, Count One or Count Three, and that the defendant
15 aided or betted that person in the commission of the offense,
16 you should find the defendant guilty of that substantive crime
17 on an aiding-and-abetting theory. If, however, you do not so
18 find, then you may not find the defendant guilty of that
19 substantive crime on an aiding-and-abetting theory.

20 That takes care of Counts One and Three. I will say
21 no more about them, I believe.

22 (Continued on next page)

23
24
25

1 THE COURT: So let's go on to the conspiracy counts.
2 And let's see. I think I've been going for quite awhile. But
3 I'm going to push on a little further and take up Counts Two
4 and Four, the charge of conspiracy to commit wire fraud.

5 I've already explained to you that a conspiracy to
6 commit a crime is a separate and different offense from the
7 substantive crime that may have been the object of the
8 conspiracy. Now that I have discussed the substantive counts
9 charged in the indictment, I'm going to discuss the elements of
10 the conspiracy counts. And I'm starting with Counts Two and
11 Four.

12 Count Two charges that from at least in or about 2019,
13 up to and including in or about November 2022, the defendant
14 conspired with others to commit wire fraud--the crime I have
15 just described to you--against customers of FTX.

16 Count Four charges that from at least June of 2022 up
17 to and including in or about November of '22, the defendant
18 conspired with others to commit wire fraud against lenders to
19 Alameda.

20 In order to sustain its burden of proof with respect
21 to the conspiracy charged in each of Counts Two and Four, the
22 government must prove each of two elements--on each count, of
23 course.

24 First, it must prove the existence of a conspiracy,
25 the conspiracy charged in the count you're considering;

1 Second, it must prove that the defendant knowingly and
2 willfully became a member of, and joined in, that conspiracy.

3 Starting with the first element, a conspiracy, as I've
4 told you, is an agreement or understanding of two or more
5 people to accomplish by concerted action a criminal or unlawful
6 purpose. In this instance, Counts Two and Four charge that the
7 criminal or unlawful purpose was to commit wire fraud.

8 To establish a conspiracy, the government is not
9 required to show that two or more people sat down at a table
10 and entered into a solemn compact stating that they have formed
11 a conspiracy to violate the law and setting forth details of
12 the plans and the means by which the project, the unlawful
13 project, is to be carried out, or the roles that everyone is
14 going to play. Since conspiracy by its very nature is
15 characterized by secrecy, it is rare that a conspiracy can be
16 proved by direct evidence of an explicit agreement. You may
17 infer the existence of a conspiracy from the circumstances of
18 this case and the conduct of the parties involved.

19 The adage "actions speak louder than words" may apply
20 here. Usually, the only evidence available with respect to the
21 existence of a conspiracy is that of disconnected acts on the
22 part of the alleged individual co-conspirators. When taken
23 together and considered as a whole, however, such acts may show
24 a conspiracy or an agreement as conclusively as would direct
25 proof. In determining whether the conspiracy charged in Counts

1 Two and Four actually existed, you may consider all of the
2 acts, conduct, and statements of the alleged co-conspirators
3 and the reasonable inferences to be drawn therefrom.

4 In order to prove the necessary agreement, it is
5 sufficient if two or more persons came to a common
6 understanding to violate the law.

7 As I told you earlier, since the essence of the crime
8 of conspiracy is an agreement or understanding to commit a
9 crime, it does not matter if the crime, the commission of which
10 was an objective or a goal of the conspiracy, ever was
11 committed. A conspiracy to commit a crime, I've told you, is
12 an entirely separate and distinct offense from the actual
13 commission of the illegal act that is the object of the
14 conspiracy. The success or failure of a conspiracy is not
15 material to the question of guilt or innocence of an alleged
16 conspirator.

17 Now each of the conspiracies charged in Counts Two and
18 Four allegedly had one object--in other words, each of the
19 conspiracies in those two counts had a single illegal purpose
20 that the co-conspirators alleged to accomplish—which was to
21 commit wire fraud against customers of FTX in the case of Count
22 Two and against lenders to Alameda in the case of Count Four.
23 I've already explained the elements of wire fraud to you when I
24 instructed you on Counts One and Three. You will apply those
25 instructions when you consider whether the government has

1 proved beyond a reasonable doubt that the conspiracies charged
2 in Count Two and Count Four existed. However, because Counts
3 Two and Four each charge a conspiracy, the government does not
4 have to prove that anyone committed the substantive crime of
5 wire fraud. It need prove beyond a reasonable doubt only that
6 there was an agreement or understanding to try to accomplish
7 that.

8 The indictment charges that the conspiracy alleged in
9 Count Two lasted from at least in or about 2019 through at
10 least in or about 2022; the conspiracy charged in Count Four
11 allegedly lasted from at least in or about June 2022 through at
12 least in or about November of that year. It is not necessary
13 for the government to prove that the conspiracy in either count
14 lasted through the entire period alleged in the indictment. It
15 is sufficient if the government proved only that it existed for
16 some period within those time frames.

17 In sum, in order to find that the conspiracies charged
18 in Count Two and in Count Four existed, the government must
19 prove beyond a reasonable doubt that there was a material
20 understanding, either spoken or unspoken, between two or more
21 people to commit the wire fraud alleged in the relevant count,
22 Two or Four.

23 The second element that the government must prove in
24 order to convict on Count Two or on Count Four is that the
25 defendant willfully joined and participated in the conspiracy

1 you are considering, with knowledge of its unlawful purpose,
2 and with an intent to aid in the accomplishment of its illegal
3 objective--assuming, of course, that the government has proved
4 that there was such a conspiracy in the first place. In other
5 words, it must prove that the defendant willfully joined and
6 participated in the conspiracy to commit the wire fraud that is
7 the subject of the count that you are considering.

8 The government must prove beyond a reasonable doubt
9 that the defendant unlawfully, willfully, knowingly, and with
10 specific intent to defraud entered into the conspiracy that's
11 relevant on each count.

12 "Knowingly" and "willfully" have the same meanings
13 here that I described earlier with respect to the second
14 element of substantive wire fraud.

15 The defendant's participation in the conspiracy, if
16 there was a conspiracy, must be established by independent
17 evidence of his own acts or statements, as well as those of the
18 other alleged co-conspirators, and the reasonable inferences
19 that may be drawn from them.

20 Now obviously science has not yet devised a manner of
21 looking into a person's mind and knowing what the person is or
22 was thinking. To make that determination, you may look to the
23 evidence of certain acts that are alleged to have taken place
24 by or with the defendant or in his presence. As I instructed
25 you earlier with respect to determining a defendant's knowledge

1 and intent, you may consider circumstantial evidence based on
2 the defendant's outward manifestation, his words, his conduct,
3 his acts, and all of the surrounding circumstances of which you
4 have heard evidence, and the rational and logical inferences
5 that may be drawn therefrom.

6 To become a member of the conspiracy, the defendant
7 need not have known the identities of each and every other
8 member, nor need he have known of all of their activities. In
9 fact, a defendant may know only one other member of a
10 conspiracy and still be a co-conspirator.

11 Moreover, the defendant need not have been fully
12 informed as to all of the details, or the scope, of an alleged
13 conspiracy in order to justify an inference of knowledge on his
14 part. Proof of a financial interest in the outcome or another
15 motive is not essential, but if you find that the defendant had
16 such an interest or such another motive, that is a factor that
17 you may consider in determining whether the defendant was a
18 member of a conspiracy, alleged conspiracy that you're
19 considering. The presence or absence of motive, however, is a
20 circumstance that you may consider as bearing on the
21 defendant's intent.

22 The duration and extent of a defendant's participation
23 has no bearing on the issue of a defendant's guilt. Each
24 member of a conspiracy may perform separate and distinct acts
25 and may perform them at different times. Some conspirators

1 play major roles, others play only minor parts. An equal role
2 is not what the law requires. In fact, even a single act may
3 be sufficient to draw a defendant within the ambit of the
4 conspiracy. Moreover, a defendant need not have joined the
5 conspiracy at the outset. He may have joined at any time, and
6 if he joined, he—or she, as may be applicable in other
7 cases—will still be held responsible for the acts done after
8 joining.

9 I do want to caution you, however, that mere
10 association by one person with another does not make that
11 person a member of a conspiracy even when coupled with
12 knowledge that a conspiracy is taking place. Similarly, mere
13 presence at the scene of a crime, even coupled with knowledge
14 that a crime is taking place, is not sufficient to support a
15 conviction. A person may know, or be friendly with, a
16 criminal, without being a criminal himself. Mere similarity of
17 conduct or the fact that people may have assembled together and
18 discussed common aims and interests does not necessarily
19 establish membership in a conspiracy.

20 I further instruct you that mere knowledge or
21 acquiescence without participation in an unlawful plan is also
22 not sufficient. The fact that the acts of a defendant, without
23 knowledge, merely happen to further the purpose or objective of
24 a conspiracy doesn't make the defendant a member.

25 What is necessary is that the defendant must have

1 participated with knowledge of the unlawful purpose of the
2 conspiracy--in this case, to commit wire fraud. The
3 instructions that I previously gave you with respect to good
4 faith apply to these counts as well. If you find that the
5 defendant acted in good faith, he can't be convicted on Counts
6 Two or Four.

7 In sum, the government must prove beyond a reasonable
8 doubt that the defendant, with an understanding of the unlawful
9 nature of the conspiracy you're considering, intentionally
10 engaged, advised, or assisted the conspiracy in order,
11 knowingly and willfully, to promote its unlawful goal. The
12 defendant thereby becomes a conspirator.

13 A conspiracy, once formed, is presumed to continue
14 until its objectives are accomplished or there is some
15 affirmative act of termination by its members. So too, once a
16 person is found to be a member of a conspiracy, that person is
17 presumed to continue being a member in the venture until the
18 venture is terminated, unless it is shown by some affirmative
19 proof that the defendant or the person concerned withdrew and
20 disassociated him or herself from it.

21 In sum, if you find the government has met its burden
22 of proof on both elements as to the count you are considering,
23 then you should find the defendant guilty on that count. If
24 you find that the government has not met that burden with
25 respect to any of the elements as to the count you are

1 considering, then you must find the defendant not guilty on
2 that count.

3 Now let's all take a break and stand up for a minute
4 and catch our breath.

5 (Pause)

6 THE COURT: In fact, we'll take a ten-minute recess.

7 THE DEPUTY CLERK: All rise. Will the jury please
8 come this way.

9 (Recess)

10 (In open court; jury present)

11 THE COURT: The record will reflect that the defendant
12 and the jurors all are present, as they have been throughout.

13 Okay. We are up to Count Five. And just so everybody
14 has an idea of schedule, I'll probably take our lunch break at
15 1, or thereabouts. I'll get to a good stopping point, we'll
16 take our half hour, and come back and finish.

17 Okay. Count Five charges the defendant with
18 conspiring to commit securities fraud. Specifically, it
19 charges that from at least in or about 2019, up to and
20 including in or about November 2022, the defendant conspired
21 with others to commit securities fraud against investors in
22 FTX.

23 Now let me just back up for a minute. My
24 ever-detail-oriented and brilliant law clerks invited my
25 attention to the fact that as I was winding up the instruction

1 with respect to the last two counts, the conspiracy counts, Two
2 and Four, I left a word out that I should have read. The
3 sentence I read to you said, they tell me, he may have joined,
4 referring to the defendant, and to the alleged conspiracy, at
5 any time, and if he joined still would be held responsible for
6 acts done before he joined. I think that's what they tell me I
7 read, but if that's what I read, doesn't matter. It should
8 have said before or after. Everybody got it? Okay.

9 Now back to Count Five.

10 In order to sustain its burden of proof with respect
11 to the conspiracy alleged in Count Five, the government must
12 prove beyond a reasonable doubt each of the three elements:

13 First, that there was an agreement or understanding to
14 accomplish the unlawful objective alleged in Count Five of the
15 indictment—specifically, securities fraud—by providing false
16 information to FTX investors;

17 Second, that the defendant knowingly and willfully
18 became a member of and joined that conspiracy;

19 Third, that at least one person who was a member of
20 that conspiracy committed some overt act in furtherance of the
21 conspiracy.

22 Now the first element, as I said, that the government
23 has to prove was that there was a conspiracy that has as its
24 object the commission of securities fraud. I have already told
25 you probably more than you ever wanted to hear about the

1 definition of a conspiracy and what it takes to prove a
2 conspiracy, and you will apply all of those instructions to
3 Count Five. So what remains is to talk to you about the
4 alleged objective of the conspiracy charged in Count Five,
5 which is securities fraud. So let me tell you about securities
6 fraud, the alleged object of this alleged conspiracy.

7 Now harkening back to something I said before, the
8 government doesn't have to prove that a securities fraud
9 actually was committed. It simply has to prove that that was
10 an objective of an alleged conspiracy that you find to have
11 existed. Securities fraud, in turn, has three elements:

12 The first element is that in connection with the
13 purchase or sale of securities, the defendant did any one or
14 more of the following: (1) employed a scheme, device, or
15 artifice to defraud—you've already heard a lot about that;
16 second, made an untrue statement of a material fact or omitted
17 to state a material fact which made what was said, in the
18 circumstances, misleading; or (3) engaged in an act, practice,
19 or course of business that operated, or would operate, as a
20 fraud or deceit upon a purchaser of the securities.

21 That's the first element of securities fraud.

22 The second element of securities fraud is that the
23 defendant, when the defendant engaged in that scheme, if the
24 defendant did so, acted knowingly, willfully, and with an
25 intent to defraud.

1 The third element of securities fraud is that in
2 furtherance of the fraudulent conduct, there occurred at least
3 one use of any means or instruments of transportation or
4 communication in interstate or foreign commerce, or the use of
5 the mails, or the use of any facility of a national securities
6 exchange.

7 So I'm going to talk about those three elements of
8 securities fraud in order that you can evaluate whether there
9 was an agreement or an understanding to attempt to accomplish
10 securities fraud.

11 The first element of securities fraud which I
12 mentioned is that the defendant did one or more of the three
13 things that I just outlined to you. In proving a fraudulent
14 act, it is not necessary for the government to prove all three
15 of those types of unlawful conduct that I just read out to you
16 a moment ago were part of the objective of the conspiracy. Any
17 one would be sufficient to satisfy that element. You must,
18 however, be unanimous as to which type of unlawful conduct was
19 the alleged object of the conspiracy.

20 Now earlier, in the context of the wire fraud charges,
21 I explained what "fraud" means, and I explained device, scheme,
22 or artifice to defraud, and you will apply those definitions
23 here.

24 Material information, in the context of securities
25 fraud, is information that a reasonable investor would have

1 considered important in making an investment decision in light
2 of the total mix of information publicly available.

3 Materiality of the information is judged as of the time the
4 information was disclosed.

5 The government must prove also beyond a reasonable
6 doubt that the defendant's alleged fraudulent conduct was in
7 connection with the purchase or sale of a security. That
8 requirement would be satisfied if you find that there was some
9 nexus or relationship between the allegedly fraudulent conduct
10 and the sale or purchase of securities. On the other hand, if
11 you are not persuaded that any fraudulent conduct that may have
12 occurred was in connection with the purchase or sale of a
13 security, you cannot convict the defendant on Count Five.

14 The second element of securities fraud is that the
15 defendant in question participated in the scheme knowingly,
16 willfully, and with intent to defraud.

17 I have already defined "knowingly" and "willfully,"
18 and you will apply those definitions here.

19 In the context of the securities laws, intent to
20 defraud means to act knowingly and with the intent to deceive.
21 Since an essential element of securities fraud is intent to
22 defraud, good faith, as I have previously defined that term, is
23 a complete defense to a charge of securities fraud. And you'll
24 apply what I've said already about good faith with respect to
25 Count Five.

1 And the final element of securities fraud is that the
2 defendant knowingly used or caused to be used at least one
3 instrumentality of interstate or foreign commerce, such as an
4 interstate or international telephone call, a use of the mails,
5 or an interstate transaction in furtherance of the scheme to
6 defraud or the fraudulent conduct.

7 The government does not have to prove that a defendant
8 was directly or personally involved in the use of an
9 instrumentality of interstate or foreign commerce. If the
10 defendant was an active participant in the scheme and took
11 steps or engaged in conduct that he knew or reasonably could
12 have foreseen would naturally and probably result in the use of
13 an instrumentality of interstate or foreign commerce, this
14 element would be satisfied. Nor is it necessary that the
15 communication did or would contain a fraudulent representation.
16 The use of the mails or instrumentality of interstate or
17 foreign commerce need not be central to the execution of the
18 scheme or even incidental to it. All that is required is that
19 the use of the mails or instrumentality of interstate or
20 foreign commerce bear some relation to the object of the scheme
21 or fraudulent commerce.

22 Moreover, the actual purchase or sale of a security
23 need not be accomplished by the use of the mails or an
24 instrumentality of interstate or foreign commerce, as long as
25 the mails or instrumentality of interstate or foreign commerce

1 are used in furtherance of the scheme and the defendant is
2 still engaged in actions that are part of the fraudulent scheme
3 when the mails or the instrumentalities of interstate or
4 foreign commerce are used.

5 I've now defined for you the elements of securities
6 fraud, the commission of which allegedly was the purpose, the
7 object, of the conspiracy found in Count Five. Again, not
8 necessary that it be proven that that purpose was achieved in
9 order to convict on Count Five.

10 The second element of the conspiracy charged in Count
11 Five is that the defendant knowingly and willfully joined and
12 participated in the conspiracy to commit securities
13 fraud—assuming, of course, that there was such a conspiracy.
14 I've already instructed you on the terms "knowingly" and
15 "willfully," and what it means for a defendant to knowingly and
16 willfully become a member of and join a conspiracy. You will
17 apply all of those instructions here.

18 The third and last element with respect to Count Five
19 that the government must prove beyond a reasonable doubt is
20 that at least one of the conspirators, not necessarily the
21 defendant, committed at least one overt act in furtherance of
22 the conspiracy. Now this is different from Counts Two and
23 Four. No overt act requirement there. Some day we'll all ask
24 congressmen why, but that's the way it is. In other words, the
25 overt act requirement requires that there have been something

1 more than an agreement--some overt step or action must have
2 been taken by at least one of the conspirators in furtherance
3 of the conspiracy. The overt act element, to put it another
4 way, is a requirement that the agreement that's charged in
5 Count Five have gone beyond merely the talking stage.

6 The government may satisfy the overt act element by
7 proving one of the overt acts that you'll find listed in the
8 indictment, but it doesn't have to prove one of the overt acts
9 listed in the indictment. It is enough if the government
10 proves one overt act committed in the furtherance of the
11 conspiracy whether or not that overt act is listed in the
12 indictment. As long as you all agree that at least one overt
13 act was committed, that element of an overt act is satisfied.
14 But you must agree on at least one act, all 12 of you.

15 Similarly, it is not necessary for the government to
16 prove that each member of the alleged conspiracy committed or
17 participated in an overt act. It's enough if you find that at
18 least one overt act was committed and performed by at least one
19 member of the conspiracy, whether the defendant or someone
20 else, and that it have furthered the conspiracy within the time
21 frame of the conspiracy. Remember, the act of any one of the
22 members of the conspiracy done in furtherance of the
23 conspiracy, effectively, in law, becomes the act of all of
24 them. To be a member of the conspiracy, it is not necessary
25 for a defendant to have committed an overt act.

1 The overt act, as I have suggested already, must have
2 been done knowingly and it must be in furtherance of one of the
3 objects of the conspiracy charged in the indictment, and in
4 fact I believe this is another count where there's one object
5 of the conspiracy—the commission of securities fraud.

6 You should be aware that an apparently innocent act
7 sheds its harmless character if it is a step in carrying out,
8 promoting, aiding, or assisting an alleged conspiratorial
9 scheme. The overt act does not have to have been an act which
10 in and of itself was criminal, or that its occurrence have been
11 an objective of the conspiracy. It's just one overt act that
12 you all agree upon and that it be in furtherance of the
13 conspiracy, regardless of what it is.

14 If you find that the government has met its burden on
15 all three elements of this conspiracy claim, Count Five, you
16 should find the defendant guilty of Count Five. If the
17 government has not met its burden with respect to any of the
18 three elements of this conspiracy claim, then you must find the
19 defendant not guilty on Count Five.

20 That brings me to Count Six, which should give you
21 confidence that some day this too will end, because there are
22 only seven. And I once charged a case with 283 counts, many
23 years ago.

24 Count Six charges that the defendant, from at least in
25 or about 2019, up to and including in or about November 2022,

1 conspired with others to commit commodities fraud against
2 customers of FTX.

3 In order to sustain its burden of proof with respect
4 to the conspiracy alleged in Count Six, the government must
5 prove beyond a reasonable doubt each of the three elements:

6 First, that there was an agreement or understanding to
7 accomplish the illegal or unlawful objective alleged in Count
8 Six—namely, commodities fraud;

9 Second, that the defendant knowingly and willfully
10 became a member of and joined that conspiracy; and

11 Thirdly, that at least one person who was a member of
12 the conspiracy committed some overt act in furtherance of that
13 conspiracy.

14 Now the elements of the conspiracy charged in Count
15 Six are exactly the same as those in Count Four, except the
16 object of Count Six is different. Count Six says the object
17 was commodities fraud, whereas Count Five alleges that the
18 object was securities fraud.

19 Once again, in order to convict on Count Six, the
20 government does not have to prove that commodities fraud was
21 actually committed, only that doing so was the objective of the
22 conspiracy. So as I did with Count Five, now I'm going to tell
23 you about commodities fraud for a similar purpose, so that you
24 understand what the object is said to have been.

25 Commodities fraud has three elements:

1 First, that the defendant did any one or more of three
2 things: thing (1) employed a manipulative device, scheme, or
3 artifice to defraud; thing (2) made an untrue statement of a
4 material fact or omitted to state a material fact which made
5 what was said, under the circumstances, misleading; and thing
6 (3) engaged in an act, practice, or course of business that
7 operated, or would operate, as a fraud or deceit. That's the
8 first element.

9 Second element: The scheme, untrue statement, act,
10 practice, or course of conduct was in connection with a swap,
11 or a contract of sale of any commodity in interstate or foreign
12 commerce.

13 Third, that the defendant acted knowingly, willfully,
14 and with an intent to defraud.

15 Now as respects the first element of commodities
16 fraud, I described that as involving doing one of three things,
17 remember? Manipulative scheme or artifice to defraud, untrue
18 statement, or omission, act, practice, or course of business
19 that operated or would operate as a fraud.

20 The government doesn't have to prove all three. Proof
21 of one is enough. But you must be unanimous as to which one.

22 Now the terms I used with respect to that first
23 element are exactly the same terms I defined with respect to
24 Count Five, and earlier counts in some cases. You will apply
25 them all here, as you will also apply what I said about good

1 faith on Count Six.

2 The second element of commodities fraud is that the
3 defendant and his co-conspirators, if there were more than one,
4 committed their conduct in connection with a swap, or a
5 contract of sale of a commodity in interstate or foreign
6 commerce. So let me tell you what those terms are.

7 A commodity is a good, article, service, right, or
8 interest in which contracts for future delivery are dealt. A
9 "contract for future delivery," which is also called a "futures
10 contract," is an agreement to buy or sell a particular
11 commodity at a specific price in the future. A virtual
12 currency or cryptocurrency may qualify as a commodity.

13 A swap is an agreement between two parties to exchange
14 payments with each other based on the value of one or more
15 rates, commodities, indices, or other financial or economic
16 interests. A swap transfers between the two parties, in whole
17 or in part, the risk of changes in value of the things
18 underlying the swap, without actually exchanging those things.
19 In determining whether a financial contract, agreement, or
20 transaction qualifies as a swap, you may consider whether the
21 arrangement is commonly known as or referred to as a swap.

22 The requirement that the fraudulent conduct, if there
23 is any, be in connection with a swap or contract of sale off of
24 a commodity is satisfied so long as there was some nexus or
25 relation between the alleged fraudulent conduct and the swap or

1 contract of sale of a commodity. Fraudulent conduct may
2 satisfy the "in connection with" requirement if you find that
3 the fraudulent conduct touched upon a swap or contract of sale
4 of a commodity. Statements directed to the general public
5 which affect the public's interest in these products are made
6 in connection with them. The fraudulent or deceitful conduct
7 need not relate to the value of the swap or contract of sale of
8 a commodity. It is also not necessary for you to find the
9 defendant was or would be the actual seller of the swap or
10 commodity.

11 Now the third element of commodities fraud is that the
12 defendant participated in the scheme to defraud, false
13 statement, misleading omission, or deceptive act, practice, or
14 course of conduct knowingly, willfully, and with intent to
15 defraud.

16 I've already instructed you about the meaning of the
17 terms "knowingly" and "willfully," and you will apply those
18 instructions here. So too with the term "intent to defraud,"
19 which I defined in connection with Count Five, and you will
20 apply those instructions here.

21 Additionally, as to Count Six, the government must
22 prove beyond a reasonable doubt a sufficient relationship
23 between the commodities fraud, which was the object of the
24 conspiracy, and the United States. And there are two ways the
25 government could do that—that is to say, satisfy that burden.

One way the government could prove a sufficient connection to the United States is by showing that some conduct relevant to the offense charged in Count Six occurred in the United States and that the fraudulent conduct that was the object of the alleged conspiracy would not have been predominantly foreign. It is not necessary that all or most of the conduct relevant to those crimes happened in the United States, although the conduct in the United States must be more than incidental to the scheme. Nor does the government have to prove that the defendant ever was in the United States, just that conduct relevant to the offenses occurred in this country. In assessing that issue, you may consider also whether conduct in furtherance of the crime charged in Count Six caused trading, money transfers, and communications to occur in the United States, or otherwise affected commerce in this country. In proving the existence of a connection to the United States, it is not necessary to prove both conduct in, and an effect on, the United States. Either would be enough to satisfy the government's burden.

A second way the government may prove a sufficient connection to the United States is by showing that some conduct relating to swaps had a direct and significant effect on, or connection with, commerce in the United States. Here, there is no need for any conduct to have occurred in the United States. All the government has to prove is that the offense involved

1 conduct that had an effect on or a connection with commerce in
2 the United States and that the effect or connection was direct
3 and significant.

4 If you find that the government has met its burden on
5 all three elements of this conspiracy claim, Count Six—that
6 is, it proved beyond a reasonable doubt that there was an
7 agreement to commit securities fraud, the defendant became a
8 member of that conspiracy, or at least one co-conspirator
9 committed an overt act in furtherance of that conspiracy, and
10 it has proved also beyond a reasonable doubt a sufficient
11 connection to the United States—then you should find the
12 defendant guilty on Count Six. If you find that the government
13 has not met its burden with respect to any of those three
14 elements of Count Six or that it has not done so with respect
15 to a sufficient connection to the United States, then you must
16 find the defendant not guilty on Count Six.

17 Now, lunchtime?

18 I misspoke, again.

19 The last paragraph should have begun: If you find
20 that the government has met its burden on all three elements of
21 its conspiracy claim in Count Six—that is, that it has proved
22 beyond a reasonable doubt that there was an agreement to commit
23 commodities fraud, that the defendant became a member of that
24 conspiracy, or at least one co-conspirator committed an overt
25 act, etc. That's how it should have gone. You forgive me for

1 my misstatement.

2 But it is now lunchtime. I will see you back at 1:30.
3 I hope you enjoy the canteen food and that you've left some for
4 others. And we'll resume with Count Seven at 1:30.

5 THE DEPUTY CLERK: Will the jury please come this way.

6 (Luncheon recess)

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1 AFTERNOON SESSION

2 1:40 p.m.

3 (Jury present)

4 THE COURT: Defendant and the jurors all are present,
5 as they have been throughout.

6 I hope you enjoyed your lunch, folks.

7 We are up to Count Seven, which is the last count on
8 which I need to instruct you.

9 The defendant is charged in Count Seven with
10 conspiracy to launder the proceeds of the wire fraud charged in
11 Count One. You will consider Count Seven if and only if you
12 find the defendant guilty on Count One. If you have found the
13 defendant not guilty on Count One, you must enter a verdict of
14 not guilty on Count Seven.

15 Count Seven charges the defendant with conspiring to
16 commit money laundering from in or about 2020, up to and
17 including in or about November 2022, by agreeing to launder the
18 proceeds of the wire fraud charged in Count One.

19 To sustain its burden with respect to the offense
20 charged in Count Seven; the government must prove beyond a
21 reasonable doubt two elements:

22 First, that two or more persons entered into an
23 unlawful agreement or understanding to seek to accomplish money
24 laundering; and

25 Second, that the defendant knowingly and willfully

1 entered into the agreement.

2 In other words, the elements of the conspiracy charged
3 in Count Seven are the same elements that the government must
4 prove with respect to the conspiracies alleged in Counts Two
5 and Four, namely, the existence of an agreement or
6 understanding to violate the law and knowing and willful entry
7 of the defendant into the agreement. The difference between
8 Counts Two and Four and Count Seven is that Counts Two and Four
9 alleged conspiracies to commit wired fraud. Count Seven is an
10 alleged conspiracy to commit money laundering.

11 Now, Count Seven actually charges that there were two
12 objects of the conspiracy charged in that count. As I told you
13 before, you don't need to find that the defendant actually or
14 anyone else actually achieved the object or objects of the
15 charged conspiracy, but only that he agreed with others or that
16 the conspirators agreed with others, putting aside the
17 defendant for the moment. I frankly lost my place, folks.

18 But the short answer is, the short principle is, you
19 don't have to find that the object of the conspiracy was
20 achieved, only that there was an agreement to do so.

21 Now, let's talk about the agreement.

22 The first object of the two objects charged in Count
23 Seven is that the defendant agreed with at least one other
24 person to commit money laundering by engaging in financial
25 transactions that involved the proceeds of the wire fraud in

1 order to conceal or disguise the nature, location, source,
2 ownership, or control of proceeds of the wire fraud. Now, the
3 wire fraud we are talking there, remember, is Count One. I am
4 going to refer to this object, this first object of the
5 conspiracy charged in Count Seven, as concealment money
6 laundering, which is a shorthand way of saying to conceal or
7 disguise the nature, location, source, ownership or control of
8 proceeds of the Count One wire fraud. That's what it is.

9 The second object of the conspiracy is that the
10 conspirators agreed to engage in money laundering by engaging
11 in monetary transactions greater than \$10,000 involving the
12 proceeds of the wire fraud. I am going to call that object
13 wire fraud proceeds money laundering.

14 So we have concealment money laundering and wire fraud
15 proceeds money laundering. In each case what we are talking
16 about is concealment of or proceeds of the money laundering
17 charged in Count One and, again, you are going to consider
18 Count Seven if and only if you found him guilty on Count One.

19 Now, John Hammel is going to distribute to you the
20 proposed verdict form which I am going to talk about very
21 briefly now.

22 The part we are interested in for now is Count Seven,
23 so it's on the second page. Everything that comes before this
24 just asks you, as you normally expect: Do you find the
25 defendant guilty or not guilty on Counts One, Two, Three, Four,

1 Five and Six? But we are going to talk about Seven because
2 it's a little different.

3 You were asked, to be sure, on Count Seven: Do you
4 find the defendant guilty or not guilty of conspiracy to commit
5 money laundering? If you find him guilty, there is another
6 line on the verdict form that you will have to fill out and it
7 asks you: In the event there is a conviction on Count Seven,
8 whether you unanimously have concluded that it was concealment
9 money laundering or wire fraud proceeds money laundering, or
10 both -- that's what's different -- and in order to answer yes
11 to those questions, each question, one, two, or both, you got
12 to be unanimous. That's the verdict form.

13 Now I am going to explain the two types of money
14 laundering.

15 I am going to start with concealment money laundering,
16 and it has four elements.

17 The first element of concealment money laundering that
18 the government must prove beyond a reasonable doubt is that a
19 person, that is to say, a person who is part of the conspiracy
20 would have conducted a financial transaction that would have
21 affected interstate or foreign commerce.

22 That is to say, if the conspiracy had had its
23 objective achieved, would a person who did that, and so forth.

24 The term conducted includes the action of initiating,
25 concluding, or participating in, initiating, or concluding a

1 transaction.

2 The term financial transaction means (1) a transaction
3 involving a financial institution, including a bank, that is
4 engaged in, or the activities of which affect, interstate or
5 foreign commerce in any way or degree, or (2) a transaction
6 that involves the movement of funds by wire or other means and
7 in any way or degree affects interstate or foreign commerce.

8 A transaction involving a financial institution
9 includes a deposit, a withdrawal, a transfer between or among
10 accounts, an exchange of currency, a loan, extension of credit,
11 purchase or sale of any stock, or any other payment, transfer,
12 or delivery by, through, or to a financial institution by
13 whatever means.

14 The term funds includes any currency, money, or other
15 medium of exchange that can be used to pay for goods and
16 services, including digital or cryptocurrency.

17 Interstate commerce, for purposes of Count Seven,
18 includes any transmission or transfer between persons or
19 entities located in different states, and foreign commerce
20 means the same thing, except that it involves somebody in the
21 United States and somebody in a foreign country. The
22 involvement of interstate or foreign commerce can be minimal.
23 The government satisfies its burden if it proves any effect or
24 involvement, regardless of whether it was beneficial or
25 harmful. It is also not necessary for the government to show

1 that the defendant actually would have intended or anticipated
2 an effect on interstate or foreign commerce by his actions or
3 that commerce actually would have been affected. All that is
4 necessary is that the natural and probable consequences of the
5 acts the defendant would have agreed to take, assuming he
6 agreed at all, would affect interstate or foreign commerce.

7 The second element of concealment money laundering is
8 that the financial transactions would have involved the
9 proceeds of specified unlawful activity. As I have said
10 already, the specified unlawful activity here is the wire fraud
11 charged in Count One, and I instruct you, therefore, that if
12 you've convicted on Count One, this element is satisfied here.

13 The term proceeds means any property or any interest
14 in property that someone would have acquired or retained as
15 profits resulting from the commission of the specified unlawful
16 activity, which I have already defined.

17 The third element of concealment money laundering is
18 that the person would have known that the financial
19 transactions at issue involved the proceeds of some form,
20 though not necessarily which form, of unlawful activity.

21 If you find beyond a reasonable doubt that the
22 defendant committed the wire fraud offense I have instructed
23 you on in Count One, and he knew that the proceeds came from
24 that activity, that is sufficient for you to find that the
25 defendant knew that the proceeds came from unlawful activity.

1 However, keep in mind that it is not necessary for the
2 defendant to know that the proceeds came from the wire fraud
3 offense alleged in Count One or that the defendant personally
4 participated in the wire fraud. It is sufficient that the
5 defendant knew that the proceeds would come from some unlawful
6 activity.

7 The fourth element of concealment money laundering
8 that the government must prove beyond a reasonable doubt
9 concerns the purpose of the transaction. Specifically, the
10 government must prove beyond a reasonable doubt an agreement to
11 conduct financial transactions with knowledge that the
12 transactions were designed in whole or in part to conceal or
13 disguise the nature, location, source, ownership, or control of
14 the proceeds of the specified unlawful activity. The
15 government need not prove that the intent to conceal or
16 disguise would have been the only or even the primary purpose
17 of the person, as long as it was an intent of that individual.

18 I previously instructed you that to act knowingly
19 means to act purposely and voluntarily and not because of
20 mistake, accident, or other innocent reason. The acts must
21 have been the product of the actor's conscious objective. To
22 prove that than act is done knowingly for the purpose of this
23 element, the government is not required to prove that the
24 person would have known that his acts were unlawful. If you
25 find that the evidence establishes beyond a reasonable doubt

1 that the person would have known of the purpose of the
2 particular transaction in issue and that he would have known
3 that the transaction was either designed to conceal or disguise
4 the true origin or ownership of the property in question, then
5 this element would be satisfied. However, if you find that the
6 person would have known of the transaction, but that the
7 government failed to prove beyond a reasonable doubt that the
8 person would have known that it was designed either to conceal
9 or disguise the true original of the property in question, but
10 instead throughout that the transaction was intended to further
11 the innocent transaction, you must find that this element has
12 not been satisfied.

13 For the fourth element to be satisfied, the person
14 whose actions you are considering need not have known which
15 specified unlawful activity he or she was agreeing to help
16 conceal. Such person need have known only that a purpose of
17 the financial transaction would have been concealing the
18 nature, location, source, ownership, or control of the funds.
19 Furthermore, intent to disguise or conceal the true origin of
20 the property need not have been the sole motivating factor for
21 the transaction.

22 That covers the elements of the first object of the
23 money laundering conspiracy alleged in Count Seven. Now I am
24 going to go on to the second object, wire fraud proceeds money
25 laundering.

1 The elements of wire fraud proceeds money laundering
2 are these:

3 First, that a person would have engaged in a monetary
4 transaction in or affecting interstate or foreign commerce;

5 Second, that the monetary transaction would have
6 involved criminally-derived property of a value greater than
7 \$10,000;

8 Third, that the property would have been derived from
9 specified unlawful activity;

10 Fourth, that the person in question would have acted
11 knowingly, that is, with knowledge that the transaction
12 involved proceeds of a criminal offense; and

13 Fifth, and last, that the transaction would have taken
14 place in the United States.

15 A bit more about the five elements individually. I
16 remind you again that you will get to Count Seven only if there
17 was a guilty verdict on Count One.

18 If there is such a guilty verdict, however, and you
19 get to Count Seven, it's sufficient to convict on Count Seven
20 if you all agree that the defendant committed either
21 concealment money laundering or financial transaction wire
22 proceeds money laundering.

23 The first element of wire fraud proceeds money
24 laundering is that the person would have conducted a financial
25 transaction that affected interstate or foreign commerce. You

1 know what that means already. I have told you.

2 The second element is that the transactions would have
3 involved criminally derived property having a value in excess
4 of \$10,000.

5 Criminally derived property means any property
6 constituting or derived from proceeds obtained from a criminal
7 offense. I already instructed you about proceeds. You will
8 apply those instructions here. Wire fraud, of course, is a
9 criminal offense.

10 The government is not required to prove that all of
11 the property involved in the transaction would have been
12 criminally derived property. However, the government must
13 prove that more than \$10,000 of the property involved would
14 have been criminally-derived property.

15 The third and fourth elements of wire fraud proceeds
16 money laundering are that the property would have been derived
17 from the specified unlawful activity and that the person would
18 have acted knowingly, that is, with knowledge that the
19 transaction involved proceeds of a criminal offense.

20 The term specified unlawful activity has been defined
21 previously. That definition applies equally to the second
22 object of the conspiracy charged in Count Seven. I have also
23 defined knowingly, and you will apply that definition here too.

24 I instruct you that the government is not required to
25 prove that the person in question knew the particular offense

1 which the criminally derived property was derived from.
2 However, the government is required to prove beyond a
3 reasonable doubt that the person in question knew that the
4 transaction involved criminally derived property, which means
5 any property constituting or derived from proceeds obtained
6 from a criminal offense. This element would be satisfied by
7 proof that the person you are considering knew that the
8 transaction involved such property, property derived from a
9 criminal offense.

10 The final element of wire fraud proceeds money
11 laundering is that the agreed-upon transaction, that is, the
12 transaction that was the object of the conspiracy, would have
13 taken place in the United States if it had been achieved.

14 If you prove that the government has -- excuse me. If
15 you find that the government has proved beyond a reasonable
16 doubt that there was an agreement or understanding by two or
17 more persons to act together to accomplish one or both of the
18 objects of the money laundering conspiracy, the first element
19 of the money laundering conspiracy charged in Count Seven will
20 have been satisfied. You then would go on to consider the
21 second element. If, on the other hand, the government has not
22 proved the existence of such an agreement or understanding, you
23 must find the defendant not guilty on Count Seven.

24 The second element of Count Seven is that the
25 government -- the defendant knowingly and willfully have joined

1 and participated in the conspiracy to commit money laundering.
2 I already have instructed you on knowingly and willfully and
3 what it means to join a conspiracy. You will apply those
4 instructions here, including the instruction concerning good
5 faith.

6 If, after conscientious and deliberate consideration
7 of the evidence, you conclude that the defendant has proved
8 each of the two elements of the charge of conspiracy to commit
9 money laundering, that is, it has proved beyond a reasonable
10 doubt that there was a conspiracy to commit money laundering
11 for the purpose of achieving either or both of the two
12 objectives I was just described and that the defendant
13 knowingly and willfully joined in that conspiracy, then you
14 should find the defendant guilty on Count Seven, and mark the
15 appropriate space on the verdict form to indicate whether you
16 found him guilty as to either or both of the concealment or
17 money wire proceeds money laundering bases. If the government
18 has failed to prove any of the elements of the conspiracy
19 charged in Count Seven with respect to both the concealment and
20 the wire fraud proceeds money laundering bases, then you must
21 find the defendant not guilty on Count Seven.

22 Now, there are three other very small points, and I'm
23 finished instructing you on the law. These will be brief.

24 First of all, as I explained with respect to every
25 count in this indictment, the government is obliged to prove

1 that the defendant, usually among other elements, acted
2 knowingly. In determining whether the defendant had knowledge
3 of a fact, you may consider whether that defendant deliberately
4 closed his eyes to what otherwise would have been obvious. As
5 you all know, if someone is actually aware of a fact, then he
6 knows it. He knows the fact. But the law allows you also to
7 find that a defendant had knowledge of a fact when the evidence
8 shows you that the defendant was aware of a high probability of
9 that fact, but intentionally avoided confirming the fact. We
10 refer to this concept, this notion of blinding yourself to what
11 is staring you in the face, as conscious avoidance or willful
12 blindness.

13 Although I told you before that acts done knowingly
14 must be a product of a defendant's conscious intention, not
15 simply the product of carelessness or negligence, a person
16 cannot willfully blind himself to what is obvious and disregard
17 what is plainly in front of him. When one consciously avoids
18 learning a fact, the law treats that person as knowing that
19 fact. An argument of conscious avoidance or willful blindness,
20 however, isn't a substitute for proof. It's simply another
21 fact you may consider in deciding what the defendant knew.

22 With respect to the substantive wire fraud charges in
23 Counts One and Three, in determining whether the government has
24 proved beyond a reasonable doubt that the defendant had
25 knowledge or acted knowingly or acted knowing that something

1 was intended or would occur, you may consider whether the
2 defendant deliberately closed his eyes to what would otherwise
3 have been obvious to him. One may not willfully and
4 intentionally remain ignorant of a fact important to his
5 conduct in order to escape the consequences of criminal law,
6 and a person cannot look at all sorts of things that make it
7 obvious to any reasonable person what is going on and then
8 claim in court that because he deliberately avoided learning,
9 explicitly what was obvious anyway, he did not actually know
10 the incriminating fact.

11 Accordingly, if you find that the defendant was aware
12 of a high probability of a fact, and that the defendant acted
13 with deliberate disregard of the facts, you may find that the
14 defendant knew that fact. However, if you find the defendant
15 actually believed that the fact was true, then you may not find
16 that he knew that fact. You must remember also that guilty
17 knowledge may not be established by demonstrating that a
18 defendant was merely negligent, or reckless or foolish or
19 mistaken.

20 Now, with respect to the conspiracy charges, that is,
21 Counts Two, Four, Five, Six, and Seven, conscious avoidance or
22 willful blindness cannot be used as a basis for finding that a
23 defendant knowingly joined a conspiracy. If you think about it
24 for a minute, you will see why. To join a conspiracy a
25 defendant needs to know that there is an agreement among one or

more persons to act together to achieve some unlawful purpose.

If the defendant doesn't know of the agreement, he can't join it. It's logically impossible. But if you find that the defendant entered into such an agreement, you are entitled to consider conscious avoidance or willful blindness in considering whether he knew the illegal object of the conspiracy. You may consider, in other words, whether the defendant was aware of a high probability that the facts were so, in other words, that there was an unlawful object and what it was, but took deliberate and conscious action to avoid confirming those facts. In other words, if you find beyond a reasonable doubt that the defendant deliberately avoided learning or confirming the illegal object of the conspiracy, such as by purposely closing his eyes to it or intentionally failing to investigate it, then you may treat this deliberate avoidance of learning a fact as the equivalent of knowledge.

If, however, the defendant actually believed he wasn't a party to an illegal agreement, or if the defendant was merely negligent or careless with regard to what knowledge he had, then he lacked the knowledge necessary to become a member of the conspiracy.

Two to go.

Now, in addition to all the elements I have described to you, you must separately decide whether an act in furtherance of each alleged crime occurred within the Southern

1 District of New York. The Southern District of New York
2 includes the Manhattan, Bronx -- I am not insulting anybody who
3 may live there, but some other counties upstate, none of which
4 was mentioned in this trial. This requirement is called venue
5 and that word refers in this context to the fact that the
6 government must prove that this case as to these various counts
7 was brought properly in this court rather than in a different
8 federal court. You will determine the satisfaction of the
9 venue requirement separately for each count.

10 For the wire fraud charges in Counts One and Two, it
11 is sufficient for the government to establish -- I'll talk
12 about the standard of proof in a minute -- venue if the
13 defendant caused any interstate or international wire, such as
14 an email, a phone call, television, Internet broadcast, or
15 financial transaction to be transmitted into or out of this
16 district.

17 What did I forget to read? Did I say Counts One and
18 Two. Never mind. I mean to say Counts One and Three. Thank
19 you, Aditi. Where would I be without them. Let me tell you,
20 it wouldn't be pretty.

21 The wire need not itself have been criminal, as long
22 as it was transmitted or caused to be transmitted as part of
23 the scheme. The act need not have been taken by the defendant,
24 so long as the act was any part of any crime you otherwise find
25 he has committed.

With respect to all the conspiracy counts, Counts Two, Four, Five, Six, and Seven, it is sufficient for the government to prove that some act in furtherance of the conspiracy occurred within the Southern District of New York. In that regard, the government does not have to prove that the crime itself was committed in this district or that the defendant himself was even present here.

Now, what's the government's burden on venue? It is not beyond a reasonable doubt. It is to show that venue was proper count by count. Of course you don't have to consider venue if you have otherwise concluded the defendant is not guilty on a particular count. Then it becomes irrelevant. But if you are considering a guilty verdict on any count, you also have to find venue is satisfied as to that count. And now as to the government's burden to establish proper venue, it is simply that the government must prove it by a preponderance of the evidence; in other words, that it is more likely than not that the requirements of venue in this district are satisfied as to that count than not.

All of the elements of the offense that I talked about before, everything other than venue, the standard is proof beyond a reasonable doubt, as I told you. Venue is different.

Regardless of what you think about the elements on any given count as to which the government is required to prove guilt beyond a reasonable doubt, if you conclude that the

1 government hasn't established proper venue by a preponderance
2 of the evidence, you must acquit on that count.

3 Lastly, you have heard various references, and you
4 will see in the indictment that goes into the jury room various
5 references to dates. It does not matter if the evidence you
6 heard at trial indicates that a particular act occurred on a
7 different date, and the government is not -- it is not
8 essential that the government prove that the charged offenses
9 started on the dates that may be alleged, either in court or in
10 the indictment, or ended on any specific dates. The law
11 requires only a substantial similarity between the dates in the
12 indictment, to the extent there are any dates in the
13 indictment, and the dates established in the evidence.

14 Now, those, folks, are my substantive legal
15 instructions. The rest of this is all downhill. Not that it
16 isn't important, but it is neither as long nor as technical.

17 I'll start out with the trial process. As I told you
18 all about the time you were selected, you are the sole and
19 exclusive judges of the facts. Please understand that I do not
20 now, and I never during this trial have meant to indicate any
21 opinion as to what the facts are or what your verdict should
22 be. The rulings I have made during the trial, the questions I
23 asked, any comments I have made in managing the trial or in
24 attempting to clarify the evidence or get it into evidence more
25 efficiently and quickly are no indication of any views that I

1 might have as to what your decision ought to be or as to
2 whether or not the government has proved its case.

3 I remind you that it is your duty to accept my
4 instructions on the law and to apply them to the facts as you
5 determine those facts to be, regardless of whether or not you
6 agree with my instructions. You are to show no prejudice
7 against an attorney or the attorney's client because the
8 attorney made objections to evidence, asked for sidebars, asked
9 me to rule on questions of law. They were doing their jobs,
10 and I was doing mine, and that's all there is to it.

11 In addition, I want to reemphasize the fact that I may
12 have asked questions of witnesses and may have made comments to
13 counsel or to a witness or witnesses. It was never intended to
14 suggest that I believed or disbelieved any witness or have any
15 view about how this case should be decided. You are to
16 disregard entirely the fact that I have asked a few questions,
17 though of course you may consider the answers, and you are to
18 disregard entirely any comments that I may have made during the
19 course of the last several weeks.

20 You should find the facts in this case without
21 prejudice as to any party. The case is brought, of course,
22 formally in the name of the United States. That doesn't
23 entitle the government to any greater consideration than the
24 defendant. By the same token, the government is entitled to no
25 less consideration. We stand for equal justice before the law.

1 It applies to both sides in court.

2 Let's talk about the evidence a little bit.

3 The evidence is the sworn testimony of the witnesses,
4 the exhibits received in evidence, and the stipulations between
5 the lawyers.

6 The indictment is not evidence. The questions,
7 arguments, or objections are not evidence. You are not to
8 consider any statements that I told you to disregard or said
9 were stricken or struck or whatever formulation I may have
10 used.

11 It is for you alone to decide the weight, if any, to
12 be given all the testimony you have heard and the exhibits you
13 have seen.

14 I have already referred a bit to direct and
15 circumstantial evidence, or at least circumstantial evidence.
16 Direct evidence is really pretty obvious. It is evidence that
17 you can observe with your own senses and evidence that a
18 witness came in and swore on the witness stand. The witness
19 personally perceived, the witness heard it, saw it, touched it.
20 You got the idea.

21 And in a case I tried earlier this year, which
22 involved the question of the meaning of the word beer, I would
23 have said taste it, but this isn't that kind of case.

24 Circumstantial evidence. Believe it or not, my idea
25 of a good time is a trial movie or a Law & Order episode or

1 whatever. I have been watching trials my entire life, many of
2 them dramatic performances of Hollywood, and I have heard on
3 television and on streaming and everywhere else more nonsense
4 about circumstantial evidence than one could possibly imagine.

5 Let me tell you the simple answer to this.
6 Circumstantial evidence is simply evidence that tends to prove
7 a fact that is in dispute by proving some other fact and
8 logically reasoning from the one you can prove to the one
9 that's maybe not so certain. That's what it's all about. The
10 circumstantial evidence is the direct evidence and it refers to
11 the process of logic. The law is that circumstantial evidence
12 is of no lesser value than direct evidence. You are simply
13 required to base your verdict on your conscientious evaluation
14 of all the evidence and come to the conclusion that you think
15 is consistent with the facts.

16 I told you during the trial that whatever the lawyers
17 stipulated to you are bound by. You must accept whatever they
18 stipulated to as being fact for purposes of this case. We have
19 heard a fair amount of credibility in the last day and a half.
20 Now it's your job to decide who you believe and how important
21 each witness was, and you're the sole judges of credibility of
22 each witness and of the importance of each witness' testimony.
23 I urge you to use your common sense and apply all of the tests
24 that you would apply in everyday life with respect to important
25 matters in determining the truthfulness and accuracy of what

1 testimony you have heard.

2 Your decision whether or not to believe a witness may
3 depend on how the witness impressed you. Was the witness
4 candid and frank and forthright? Or did the witness seem as if
5 the witness was hiding something, being evasive or suspect in
6 some way? How did the way the witness testified on direct
7 examination compare with how the witness testified on
8 cross-examination? Was the witness consistent in the witness'
9 testimony, or did the witness contradict what he had said on
10 another occasion? Did a witness appear to know what he or she
11 was talking about, and did the witness strike you as someone
12 who was trying to report his or her knowledge accurately?

13 If you find that a witness willfully lied to you about
14 any material matter, you may either disregard everything that
15 witness said or you may accept whatever part of it you think
16 deserves to be believed. In other words, if you find that a
17 witness lied under oath about a material fact, you may treat it
18 like a slice of toast that has been partially burned. You can
19 either throw the whole piece in the trash or you can scrape the
20 black parts off and eat the rest.

21 Ultimately, the determination of whether and to what
22 extent you accept the testimony of any witness is entirely up
23 to you.

24 In evaluating the credibility of the witnesses, you
25 should take into account any evidence that a witness may

1 benefit in some way from the outcome of the case. Keep in
2 mind, though, that it doesn't automatically follow that
3 testimony given by an interested witness is to be disbelieved.
4 It is for you to decide, based on your own perceptions and your
5 common sense, the extent to which a witness' interest has
6 affected whatever the witness testified to, if it affected it
7 at all.

8 Now, you have heard the testimony of at least two, but
9 there may have been another, law enforcement officers. The
10 fact that a witness may be, or may previously have been,
11 employed by the government in law enforcement does not mean
12 that the witness' testimony is deserving of any more
13 consideration or any less consideration, or in each case
14 weight, of an ordinary witness. At the same time, in
15 considering the credibility of such a witness, you are entitled
16 to consider whether the testimony may have been colored by a
17 personal or a professional interest in the outcome of the case.

18 It is your decision, after reviewing all of the
19 evidence, whether to accept the testimony of law enforcement
20 witnesses and to give that testimony whatever weight you find
21 it deserves.

22 You have heard testimony from a number of government
23 witnesses that they actually were involved in planning and
24 carrying out some of the crimes charged in the indictment.

25 You should be aware that it is not unusual for the

1 government to rely on the testimony of witnesses who admit to
2 having participated in criminal activity. The government has
3 to take its witnesses as it finds them, and frequently the
4 government must use such testimony in criminal prosecutions
5 because it otherwise would be difficult and sometimes
6 impossible to detect and prosecute wrongdoers. Accordingly,
7 the law allows the use of cooperating witness testimony, and
8 you may consider the testimony of these witnesses in
9 determining whether the government has met its burden of
10 proving guilt beyond a reasonable doubt.

11 However, the testimony of an accomplice witness should
12 be scrutinized with special care and caution because such
13 witnesses may believe that it is in their interest to give
14 testimony favorable to the government. The fact that a witness
15 is an accomplice can be considered by you as bearing on the
16 witness' credibility. It doesn't follow, however, that simply
17 because a person has admitted to participating in one or more
18 crimes that he or she is incapable of giving a truthful version
19 of what happened.

20 Like the testimony of any other witness, accomplice
21 witness testimony should be given the weight you think it
22 deserves in light of the facts and circumstances before you,
23 taking into account the witness' demeanor, candor, the strength
24 and accuracy of the witness' recollection, their background,
25 and the extent to which their testimony is or is not

1 corroborated by other evidence. You may consider whether an
2 accomplice witness, like any other witness in this case, has an
3 interest in the outcome and, if so, whether and to what extent
4 it may have affected the witness' testimony.

5 You certainly heard testimony, and probably have in
6 evidence before you, though I don't offhand remember, certain
7 agreements between the government and accomplice witnesses. I
8 must caution you that it is of no concern to you why the
9 government made agreements with any particular witness. Your
10 sole concern is whether a witness has given truthful and
11 accurate testimony here in this courtroom before you.

12 In evaluating the testimony of accomplice witnesses,
13 you should ask yourself whether these witnesses would benefit
14 more by lying or by telling the truth. Was their testimony
15 made up in any way because they believed or hoped that it would
16 somehow result in favorable treatment if they testified
17 falsely, or did they think their interests would best be served
18 by testifying truthfully and accurately? You believe if that a
19 witness was motivated by hopes of personal gain, was that the
20 motivation one that would cause him to lie, or was it one that
21 would cause the witness to tell the truth? Did the motivation
22 color the witness' testimony?

23 If you find that the testimony was false, you should
24 reject it. If, however, after carefully and cautiously
25 examining an accomplice witness' testimony and demeanor, and

1 you are satisfied that the witness told you the truth, you
2 should accept it as credible and act on it accordingly.

3 As with any witness, let me emphasize that this issue
4 of credibility doesn't have to be an all-or-nothing decision on
5 your part. Even if you find that a witness testified falsely
6 in one part, you still may accept their testimony in other
7 parts, or you may disregard all of it. That's up to you. It
8 is not an all-or-nothing decision necessarily. It may be, but
9 that's your job.

10 You have also heard testimony from, I believe, three
11 government witnesses who have pleaded guilty to charges arising
12 out of the same facts that are at issue in this case. I
13 instruct you that you are to draw no conclusions or inferences
14 of any kind about the guilt of Mr. Bankman-Fried from the fact
15 that one or more prosecution witnesses pled guilty to similar
16 charges. The decision of those witnesses to plead guilty were
17 personal decisions that those individuals made about their own
18 guilt, and it may not be used by you in any way as evidence
19 against or unfavorable to the defendant in this case.

20 You also heard testimony from one witness who entered
21 into a nonprosecution agreement with the government arising out
22 of at least some of the same facts that are at issue in this
23 case. I instruct you that you are to draw no conclusions or
24 inferences of any kind about the guilt of the defendant here in
25 this case from the fact that a prosecution witness entered into

1 such an agreement. Again, that was a personal decision and it
2 may not be used by you in any way as evidence against the
3 defendant.

4 The same is true with respect to the testimony of the
5 one witness who testified under a grant of immunity, formal
6 immunity issued by the Court. The testimony of such a witness
7 cannot be used against the witness in a criminal case except
8 for prosecutions for perjury or giving false statements to the
9 Court while he was immunized. I instruct you that the
10 government is entitled to call such a witness as a person who
11 has been granted immunity by an order of this Court. You
12 should examine the testimony of such a witness to determine
13 whether or not it's colored in any way by the witness' own
14 interests. If you believe the testimony, you may give it
15 whatever weight you think it deserves.

16 You heard a couple of expert witnesses in this case,
17 and I'm using a couple as an approximation. I don't remember
18 the count. Why are they here? Ordinarily, witnesses are
19 restricted to testify about facts, facts that they have
20 personal knowledge of.

21 (Continued on next page)

1 THE COURT: There are occasions when there are people,
2 however, who have technical or specialized knowledge in some
3 area that would assist you, the jurors, in deciding a disputed
4 fact. And when that occurs, a witness who has those
5 qualifications can be called to testify about some evidence or
6 facts at issue in the form of opinions.

7 In weighing expert testimony, of course you may
8 consider the expert's qualifications, the opinions given, the
9 reasons the witness is here and why they're testifying, and
10 everything else I talked to you about relating to credibility.
11 You can give the expert testimony whatever weight you think it
12 deserves in light of the whole record in this case. What you
13 should not do is accept a witness's testimony because the
14 witness in some sense is regarded as an expert. It's not a
15 substitute for your own common sense, judgment, and reason.
16 The determination of the facts is up to you, not expert
17 witnesses.

18 Now you have heard some evidence that the defendant
19 was involved in conduct that is not charged in the indictment
20 in this case, and you probably all remember what that is.
21 You've heard some evidence about an alleged bribe involving one
22 or more Chinese government officials and alleged campaign
23 finance law issues. Mr. Bankman-Fried is not on trial for any
24 such offenses here. You can't consider the evidence of those
25 uncharged bad acts as a substitute for proof that he committed

1 the crimes of which he is accused in this case, nor may you
2 consider that evidence as proving that the defendant is a
3 person with a propensity to commit crimes or a man of bad
4 character. The evidence was admitted for limited purposes, and
5 you may consider it only for those purposes.

6 You may consider the evidence you heard regarding the
7 alleged bribe to someone in China as bearing on the
8 relationship of trust and confidence between the defendant and
9 Ms. Ellison and as to the defendant's motives. You may
10 consider the evidence you heard regarding the campaign finance
11 matters as relevant to the defendant's criminal intent and
12 knowledge and as to his relationship of mutual trust with
13 Mr. Singh. You may also consider that evidence as direct
14 evidence of the charged wire fraud scheme on FTX customers, as
15 it pertains to allegations about how the defendant spent
16 alleged misappropriated customer funds, and as direct evidence
17 of the charged money laundering conspiracy, as it pertains to
18 the allegation that the defendant engaged in financial
19 transactions that it is alleged were designed to conceal the
20 nature, location, source, ownership, or control of criminal
21 proceeds. And I remind you that this is not to be considered
22 as evidence of a criminal propensity and that the defendant is
23 not charged with crimes on the basis of those two categories of
24 evidence.

25 Certain evidence that came in concerned the acts and

1 statements of others because the acts were committed and the
2 statements were made by individuals whom the government claims
3 conspired with the defendant.

4 The reason for allowing that evidence has to do with
5 the nature of the crime of conspiracy. A conspiracy is often
6 referred to as a partnership in crime. Thus, as in other types
7 of partnerships, when people enter into a conspiracy to
8 accomplish an unlawful end, each and every member of the
9 conspiracy becomes an agent for the other conspirators in
10 carrying out the conspiracy.

11 In determining the factual issues before you, you may
12 consider against the defendant any acts or statements made by
13 any of the people that you find, under the standards I have
14 already described, to have been his co-conspirators, even
15 though such acts or statements were not made in his presence,
16 or were made without his knowledge.

17 You have heard some evidence during the trial that at
18 least one witness—and possibly more than one, although I don't
19 remember, it's your memory that counts, folks—prior to the
20 trial, made statements that were the same as, or similar to,
21 the testimony the witness gave in court. As I instructed you
22 then, I believe, and in any case instruct you now, you may
23 consider evidence of such statements—that is, pretrial
24 statements consistent with what was said at trial—in
25 determining the facts of the case. Evidence like that may help

1 you decide whether you believe the witness's testimony in
2 court. If the witness made statements before trial, and before
3 the witness was aware of anything that would have given him or
4 her a motive to give a false account, in other words, that were
5 the same as or similar to what the witness said at trial, that
6 may be reason for you to believe his or her trial testimony on
7 the same subject.

8 You have certainly heard evidence during the trial
9 that some witnesses have discussed the facts of the case and
10 their testimony with lawyers before they appeared in court.

11 You're entitled to consider that fact in evaluating
12 credibility, but I do tell you that there is nothing unusual or
13 improper about a witness meeting with lawyers before testifying
14 so that the witness can be aware of the subjects he or she will
15 be questioned about, focus on those subjects, and have the
16 opportunity to review relevant evidence before being questioned
17 about them in court. Such consultation helps conserve your
18 time and, frankly, the Court's time. In fact, it would be
19 unusual for a lawyer to call a witness without such
20 consultation.

21 But again, the weight you give to the fact or nature
22 of a witness's preparation for testimony and what conclusions
23 or inferences you draw from preparation like that are
24 completely up to you.

25 Now I'm about to make a vast understatement.

1 There is evidence before you in the form of charts and
2 summaries. These exhibits purport to summarize some of the
3 underlying evidence that was used to prepare them, and they
4 were shown to you to make the other evidence more meaningful
5 and to aid you in considering the evidence. They are no better
6 than the documents they're based on, and they're not themselves
7 independent evidence. You are therefore to give no greater
8 weight to the charts and summaries than you would give to the
9 evidence on which they are based.

10 It is for you to decide whether the charts and
11 summaries correctly present the information contained in the
12 exhibits on which they were based. You are entitled to
13 consider them if they help you in analyzing and understanding
14 the evidence.

15 I have instructed you previously during the trial
16 about the audio and video recordings and, in those cases where
17 there are transcripts, that it's the recordings that are the
18 ultimate determinative evidence, not the transcripts. I'm
19 going to spare you repeating it.

20 There are some documents and exhibits received in
21 evidence that are marked redacted and probably a few that
22 simply have big black blotches on them in some of the original
23 content. You are only to concern yourself with the parts that
24 have not been redacted. You are not to speculate about what's
25 under the black markings and what was redacted. There were

1 sufficient reasons for doing all of that, to the extent it was
2 done, and you are not to concern yourself with what those
3 reasons might have been. You are to decide the case on the
4 basis of what's actually in front of you.

5 Now you have certainly heard a lot of people's names
6 during the course of this trial who were not called as
7 witnesses. I instruct you that both sides had an equal
8 opportunity or lack of opportunity to call as a witness any of
9 them. Therefore, you should not draw any inferences or reach
10 any conclusions as to what those people might have testified to
11 had they been called. Their absence should not affect your
12 judgment at all.

13 But you should remember that the law does not impose
14 on the defendant in a criminal case the burden of calling any
15 witnesses or producing any evidence. The burden of proof is
16 always with the government.

17 Now you have heard recordings or seen statements by
18 the defendant, which are in evidence, in which he claimed that
19 his conduct was consistent with innocence and not guilt. The
20 government claims that these statements, or at least some of
21 them, in which he exonerated or exculpated himself are false.

22 If you find that the defendant gave one or more false
23 statements in order to divert suspicion from himself, you may,
24 but you are not required to, infer that he believed he was
25 guilty. You may not, however, infer on the basis of that

1 evidence alone that the defendant in fact is guilty of any of
2 the crimes with which he is charged.

3 Whether or not the evidence as to the defendant's
4 statements shows that he believed he was guilty and the
5 significance, if any, to be attached to any such evidence, are
6 matters for you to decide.

7 Now let's talk about auto-deletion for a minute.

8 And we truly are in the home stretch.

9 If you find that the defendant deleted or caused the
10 deletion of communications, you may, but you need not, infer
11 that he believed that he was guilty. You may not, however,
12 infer on the basis of this alone that the defendant is in fact
13 guilty of any of the crimes with which he is charged.

14 Whether or not the evidence as to a defendant's
15 deletion of evidence, or his having caused evidence to be
16 deleted, shows that the defendant believed he was guilty, and
17 the significance, if any, to be attached to any such deletions,
18 are for you to decide.

19 You have heard some testimony about evidence that was
20 seized pursuant to one or more search warrants signed by a
21 judge, from email accounts, Twitter accounts, electronic
22 devices, and conceivably other things, but I don't remember.
23 Evidence obtained from such searches were properly admitted in
24 this case and are properly considered by you. Indeed, searches
25 of online accounts and electronic devices are entirely

1 appropriate law enforcement actions. Whether you approve or
2 disapprove of how that evidence was obtained should not enter
3 into your deliberations because I now instruct you that the
4 government's use of that evidence is entirely lawful.

5 You must give that evidence, regardless of personal
6 opinions, full consideration along with all other evidence in
7 deciding whether the government has proved the defendant's
8 guilt beyond a reasonable doubt.

9 Now in a criminal case, of course, a defendant never
10 has a duty to testify or to come forward with any evidence.
11 The reason, as I've told you, is that he is presumed innocent
12 and the government at all times has the burden of proof beyond
13 a reasonable doubt. Except of course on venue, where it's by a
14 preponderance of the evidence. But if the defendant takes the
15 stand and testifies on his own behalf, he has the right to do
16 that.

17 In this case, Mr. Bankman-Fried decided to testify,
18 like any other witness, and he was subject to
19 cross-examination. You should examine and evaluate the
20 testimony of the defendant just as you would the testimony of
21 any other defendant.

22 Some of the people who may have been involved in the
23 events leading to this trial are not on trial here. You may
24 draw no inference, favorable or unfavorable, toward the
25 government or the defendant from the fact that any person other

than defendant is not on trial here. Nor may you speculate as to the reasons why that is so. Those matters are wholly outside your concern, and you may not consider them in reaching your verdict. Your task is limited to considering the charges in the indictment and the defendant before you.

Now John Hammel points out to me that I made a mistake a moment ago. I mistakenly said you should examine and evaluate the testimony of the defendant just as you would the testimony of any other defendant. If in fact I said that, it was wrong. And I will read it to you the way I typed it. The hour draws late. You should examine and evaluate the testimony of the defendant just as you would the testimony of any other witness.

The question of possible punishment of the defendant is of no concern to the jury, and it should not enter into or influence your deliberations. The duty of sentencing in the event of a conviction rests entirely with the Court. Under your oath, you cannot allow consideration of punishment that may be imposed in the event of conviction to influence your judgment.

Last words. Your deliberations. You're going to retire to decide this case in just a couple of minutes. You must consult with each other and deliberate with a view to reaching an agreement. Each of you must decide the case for yourself, but you should do so only after considering the case

1 with your fellow jurors. You should not hesitate to change an
2 opinion if you're convinced it's erroneous.

3 Your verdict, whether it's guilty or not guilty, must
4 be unanimous, but you are not bound to surrender your honest
5 convictions concerning the weight or the effect of the evidence
6 merely for the purpose of returning a verdict or solely because
7 of the views of other jurors. Discuss and weigh your
8 respective opinions dispassionately, without regard to
9 sympathy, without regard to prejudice or favor for either
10 party, and come to the conclusion which in your good conscience
11 appears from the evidence to be in accordance with the truth.

12 I need to say a word about your notes. I remind you
13 that any notes you may have taken are for your personal use
14 only. Each of you may consult your own notes during
15 deliberations, but any notes you may have taken are not to be
16 regarded during deliberations as a substitute for the
17 collective memory of all of you. Your notes should be used as
18 memory aids but shouldn't be given precedence over your
19 independent recollection of the evidence. If you did not take
20 notes, you should rely on your own independent recollection of
21 the evidence, and you should not be influenced by the notes of
22 others. The notes are entitled to no greater weight than the
23 recollection or impression of each juror as to what the
24 evidence showed.

25 You are all, as I told you right at the beginning,

1 going to get a typewritten copy of my instructions in the jury
2 room. Two things about that. The copies you get will have a
3 handful of handwritten interlineations, which are my chicken
4 scratchings making little tiny corrections that I made as I
5 went along. And the little tiny corrections are part of the
6 instructions. They are binding on you.

7 You are also going to find scattered among the
8 instructions legal citations. They are probably going to be
9 incomprehensible because—and here I'm being facetious again,
10 but—they're in lawyer code. They indicate which books, on
11 what volume and what page things come from. You are not going
12 to understand them, I think, and even if you do, disregard them
13 entirely. They are my audit trail and the lawyers' audit trail
14 about what we are relying on in formulating the instructions
15 I've given you.

16 You are not to discuss the case unless all 12 jurors
17 are there. When there are less than 12 of you, you are not a
18 jury. You are 10 or 11 or six what I imagine by now are pretty
19 good friends; at least I hope so.

20 When you retire, you will select one of your number as
21 the foreperson. That person will preside over the
22 deliberations and speak for you here in open court. The
23 foreperson will send out any notes and, when you've reached a
24 verdict, the foreperson will notify the court officer that you
25 have a verdict, and I'll talk more about how.

1 And now is the best time. You have the verdict form
2 already. If you need more, you'll send out a note and ask for
3 more. But they're all the same. When you've reached a
4 verdict, the foreperson should record the verdict on a copy of
5 the verdict form, and that's of course when you have a
6 unanimous verdict. Please don't add any commentary or any
7 suggestions or thoughts to the verdict form. They're basically
8 yes/no questions. I can tell you from prior experience, no
9 good will come of it. Maybe no bad, but no good will come of
10 it, and it will take time.

11 When you have a verdict form filled out, each of you
12 should sign it. The foreperson will send in a note with the
13 court officer in a sealed envelope that says, "We have a
14 verdict." Don't give the verdict form to the court officer.
15 Put it in an envelope. The foreperson will bring it into the
16 courtroom. Clutch it tightly to your breast. And I will ask
17 for it at the appropriate moment. I stress that you each
18 should be in agreement when it's announced in court. Once it's
19 announced by the foreperson and officially recorded, it
20 ordinarily cannot be revoked.

21 If during your deliberations you want me to discuss
22 any of my instructions further or you have any questions about
23 my instructions, you should formulate a note. The foreperson
24 should put the note in a sealed envelope, give it to the court
25 officer, tell the court officer there's a note. Every page and

line of these instructions is numbered. If it's a question about something in the instructions, give the page numbers and lines so that I know for sure what you're talking about. The procedure we go through when we get a note is I give the note to the lawyers, the lawyers each decide what they think it means and what they think the answer should be. If everybody's in agreement, I'll bring you into the courtroom and answer the question. If there's disagreement, I'll decide the answer and bring you back and give you the answer. And that process is facilitated and speeded up the faster we can understand the note. So that's the reason for being specific.

We will respond to any requests as fast as we can.

Now if you need any testimony read back, the procedure is exactly the same. Send in a note, sealed envelope, and exactly what you want to hear. With the witnesses, if you can remember whether it's direct or cross, what the subject is, just be as specific as you possibly can. We go through the same procedure. We try to understand what you're really asking for, and then we have to search through the transcript, which is now over 3,000 pages—there are some automated ways of searching, but they're not perfect—and get you exactly what you want, and we will do that. But first of all, be sure you need it, and second of all, be as clear as you can be.

I remind you that you took an oath to render judgment impartially and fairly, without prejudice or sympathy and

1 without fear, based solely on the evidence in the case and the
2 applicable law. It would be improper for you to consider, in
3 reaching your decision as to whether or not the government
4 sustained its burden of proof, any personal feelings you may
5 have about the race, religion, national origin, sex, or age of
6 the defendant.

7 If you let prejudice or sympathy enter into your
8 thinking, it could interfere with clarity of judgment, and
9 there's a risk that you would not arrive at a just verdict.

10 Both parties are entitled to a fair trial. You must
11 make a fair and impartial decision to come to a just verdict.
12 If you have a reasonable doubt as to the defendant's guilt on
13 one or more counts, you should not hesitate to find him not
14 guilty. On the other hand, if you find the government has met
15 its burden of proving the defendant's guilt beyond a reasonable
16 doubt on one or more counts, you should not hesitate, because
17 of sympathy or anything else, to find him guilty.

18 Finally, on a related point that I suspect crossed
19 somebody's mind at some point, in the federal system, we have
20 crimes only that are defined by statutes—laws passed by
21 Congress and signed by the president. I have instructed you as
22 to the law under those statutes, and it's your job to apply
23 those instructions to the facts that you find. In the event
24 that you conscientiously conclude that the government has not
25 proved every required element necessary to convict, but you

1 necessarily think that something was morally wrong or unfair,
2 you may not allow your feelings to substitute for your
3 conscientious determination as to the facts or following the
4 law that I have given you. You are obliged to return a verdict
5 consistent with the law and the facts as you find them,
6 regardless of personal feelings.

7 Now a couple of other—oh, yes. If you need any
8 exhibits, you will tell us.

9 Now you're going to get a laptop, and I think it's
10 going to have either all of one party's exhibits or all of the
11 exhibits. And use it to your heart's content. But if there's
12 something in evidence that you need that you don't have in
13 there and that we haven't sent in to you and you want it, send
14 us a note, we'll get it for you.

15 Thank you, Aditi.

16 Now let me come to our stalwart alternates.

17 You are not going to deliberate, at least now. But I
18 am not discharging you. You remain alternates in this case,
19 though I'm going to send you off home or wherever you go next.
20 You may not discuss the case or read about the case or any of
21 the other things about the case that I told you at the
22 beginning not to do, and the reason for that is that if, god
23 forbid, something happens to a juror, you may be re-called to
24 serve as a juror in this case, in which case deliberations will
25 begin anew and you will be one of the 12 jurors just as if you

1 were one of the first 12 now. It is very important that you
2 adhere to that instruction. Now believe me when I say that
3 everybody appreciates your time here, your close attention
4 here. It was essential—particularly in this era, when all
5 sorts of things happen, not least of which a pandemic that we
6 hope is nearly all gone—that we have alternates, and we thank
7 you. So you now will go with the court officer into the
8 jury—sorry.

9 MS. SASSOON: Your Honor, there are a couple things to
10 raise at sidebar with regards to the instructions before the
11 alternates are discharged.

12 THE COURT: All right. Just give us a moment.

13 (At the sidebar)

14 THE COURT: Quickly.

15 MS. SASSOON: Page 43. I'm going in reverse order.
16 We didn't catch this typo before, but on lines 18-19, on
17 page 43, it says, "However, if you find that the defendant
18 actually believed the fact was true, then you may not find he
19 knew the facts," and it should say "believed that the fact was
20 not true." And I think it's important just to get the context
21 of the instruction correctly.

22 THE COURT: I'm just showing you that I marked that on
23 here. Do you agree with that?

24 MR. COHEN: Yes.

25 THE COURT: Next.

1 MS. SASSOON: The other one I have is on page 37, with
2 regard to concealment money laundering. The second element.
3 So we're at lines 16-21.

4 THE COURT: Just give me a minute to wrestle with the
5 staples.

6 Go ahead.

7 MS. SASSOON: So this is not reflected in the
8 language. I think your Honor went slightly off script and said
9 something along the lines of, "If you find he's guilty of wire
10 fraud, this element is satisfied." And I believe it's that
11 that meets the definition of "specified unlawful activity," but
12 your Honor I don't think read lines 20-21.

13 THE COURT: I think you're right. So I'll read that
14 whole paragraph to the jury then. Yes?

15 MR. REHN: One more.

16 MR. COHEN: Your Honor?

17 MR. REHN: Sorry. We have one more from the
18 government first.

19 On page 63, you did not read the sentence telling them
20 that they should not indicate in a note to the Court how they
21 were divided.

22 THE COURT: Yes, okay.

23 MR. REHN: Which is on lines 18-20.

24 MR. COHEN: And your Honor, on page 35, lines 5-6, the
25 Court read "must prove beyond a reasonable doubt."

1 THE COURT: Yes, I did.

2 MR. COHEN: The text—the wording has to be added to
3 the text.

4 THE COURT: Well, I gave it orally so I'm just going
5 to interlineate.

6 MR. COHEN: Okay. And then several times—and I think
7 this can probably be just addressed by one more repetition, but
8 several times, starting with page 19, lines 24-26, the Court
9 read—

10 THE COURT: You're going too fast for me. Let me get
11 to page 19.

12 MR. COHEN: Sorry, your Honor.

13 THE COURT: Yes. What lines?

14 MR. COHEN: 24-26. And the way it came out in the
15 reading was the Court left out the phrase "the government must
16 prove beyond a reasonable doubt."

17 THE COURT: That entire phrase?

18 MR. COHEN: Yes, just that. The rest of it was read
19 except for the clause "the government must prove"—the "beyond
20 a reasonable doubt" part.

21 THE COURT: So you're telling me that I charged that,
22 and I'm quoting now, charged in Counts Two and Four each of the
23 following elements?

24 MR. COHEN: Yes, yes.

25 MR. REHN: I only had it as omitted "beyond a

1 reasonable doubt."

2 MR. COHEN: That's what I said, yeah.

3 MR. REHN: I think you read "the government must
4 prove."

5 MR. COHEN: No. I had it the same as Mr. Rehn. And I
6 think that happened again.

7 THE COURT: Yes. Look, I understand, and you may well
8 be right that I omitted it, but I think I probably said a
9 hundred times in this that they have to prove every element
10 beyond a reasonable doubt.

11 MR. COHEN: Right, and where I was getting to was we
12 would ask that you just repeat that one, because it happened a
13 few other times. Rather than—

14 THE COURT: It's quite possible. All right. So I'll
15 start with that one.

16 MR. COHEN: Okay.

17 THE COURT: And then somebody's going to prompt me
18 page by page. And I'll start with you if there's another page
19 that you made a point about—

20 MR. COHEN: That's it, your Honor.

21 THE COURT: —and then go to the government.

22 MR. COHEN: Your Honor, before we go back, a couple
23 other things. Obviously for record purposes, we continue any
24 objections we made at the charge conference and before about
25 the charges, the charges we had asked for. And also, we would

1 ask that the Court—

2 THE COURT: I didn't hear your whole statement.

3 MR. COHEN: I'm sorry. For record purposes—

4 THE COURT: Obviously you need not renew objections
5 you made at the charge conference.

6 MR. COHEN: Okay. And lastly, your Honor, we would
7 ask that you instruct the jury that while they certainly can
8 stay to 8:15 tonight, they're not required to, and if they feel
9 it would be more productive for them to pick up on Monday, that
10 they may do so.

11 THE COURT: Yeah, I'll do that.

12 Okay.

13 MR. EVERDELL: Your Honor, one last thing. This is
14 the indictment that the government prepared to pass back to the
15 jury.

16 THE COURT: I'll deal with that when the jury is out.

17 MR. EVERDELL: Okay.

18 (In open court)

19 THE COURT: Okay. During the course of my reading of
20 the typewritten instructions, counsel have brought to my
21 attention that in one place or another, I left out a phrase or
22 a word, and we're going to go through about a half a dozen of
23 these corrections now.

24 First of all, before we even do that, I remind you
25 that as I said many, many times during the course of the

1 instructions, it is the government's burden to prove each of
2 the essential elements of the offense beyond a reasonable
3 doubt, and if anywhere in the typescript or in my oral
4 rendition of the typescript I left out any of those words, you
5 are to understand that they belong there, "beyond a reasonable
6 doubt."

7 Okay. Now—

8 MS. SASSOON: Page 37.

9 THE COURT: Okay. See, I have very able prompters.

10 Oh, you're now going in ascending order rather than
11 descending order?

12 MS. SASSOON: I started with the earliest, but I can—

13 THE COURT: Listen, I'll go either way. I'm very
14 versatile on that, backwards and forwards.

15 Okay. In the course of charging you on the second
16 element of concealment money laundering, I am told that I
17 orally may have gone off script, so I'm going to read you that
18 paragraph again. But it is accurate in the typescript. And
19 that paragraph reads:

20 The second element of concealment money laundering is
21 that the financial transactions would have involved the
22 proceeds of specified unlawful activity. Here, the specified
23 unlawful activity is the wire fraud offense charged in Count
24 One, and I instruct you as a matter of law that the wire fraud
25 charged in Count One of the indictment, if proven beyond a

1 reasonable doubt, meets the definition of "specified unlawful
2 activity." You must determine whether the funds involved in
3 the financial transactions would have been proceeds of that
4 unlawful activity.

5 Next.

6 MS. SASSOON: Page 43, lines 18-19. But perhaps some
7 context is necessary.

8 THE COURT: Don't worry. I think I can handle it.

9 I'll read you this whole paragraph. We were talking
10 here about conscious avoidance and willful blindness, and in
11 summing up part of that, I left a "not" out somewhere. So I'm
12 now going to read it to you accurately, and this will be
13 reflected in an interlineation in my handwriting, which I
14 promise to make arguably readable.

15 Accordingly, if you find that the defendant was aware
16 of a high probability of a fact and that defendant acted with
17 deliberate disregard of the facts, you may find that the
18 defendant knew that fact. However, if you find that the
19 defendant actually believed that the fact was not true, then
20 you may not find that he knew that fact.

21 Next.

22 MS. SASSOON: Page 63, lines 18-20.

23 THE COURT: Yes. I neglected to tell you that if you
24 communicate with the Court before you reach a verdict, either
25 by a note or in the courtroom, you are not ever to indicate how

1 you are divided on the defendant's guilt or lack of guilt,
2 unless I specifically ask you for it.

3 And?

4 MS. SASSOON: Nothing further.

5 MR. COHEN: You've already addressed our point, your
6 Honor. Thank you.

7 THE COURT: There was a place on page 28 where I was
8 talking about securities fraud and I mistakenly said
9 "fraudulent commerce" instead of "fraudulent conduct." But
10 we'll fix that one too. Thank you, Aditi.

11 Okay. Now back to the alternates.

12 You folks are temporarily excused, but you are subject
13 to re-call. I imagine Andy will tell you how to find out when
14 the case is finally over and you're done. You can always call
15 Andy. So if the five of you would kindly go with Andy, collect
16 your stuff, leave your notes with Andy, and we'll proceed from
17 there.

18 (Alternates excused)

19 THE COURT: Please be seated.

20 Now, members of the jury, it is ten after 3. Let's
21 talk about the rest of the day.

22 First of all, although I'm willing to stay till 8:15
23 if you want to stay till 8:15—car service, cafeteria,
24 dinner—but you're not obliged to. And it would be extremely
25 helpful if you could send us a note in the next half hour

about—I have to be careful how I phrase this to get it exactly right—should we order supper, should we order car service. Two different questions. You could do one without the other. And it's a question of what you want. And if you want to order both against the possibility that you'll use it, that's okay too. The government can afford it. I don't mean to say the government's money should be wasted. Obviously not. But we have to give advance notice to the vendors in order to make sure it's available should you need it, and that's a legitimate purpose.

So as soon as Andy gets back, we will send you out to deliberate.

First thing he's going to do is swear the officer, of which these two were going to remind me.

Oh, yes. I'm reminded that I committed to the court staff that we would not keep you past 8. Somebody has a train to catch.

Swear the Marshal, please.

THE DEPUTY CLERK: Okay. Would the Marshal please come forward and raise his right hand.

(Marshal sworn)

THE DEPUTY CLERK: Thank you.

THE COURT: Ladies and gentlemen, thank you for your attention. You will get the charge in writing as soon as we can Xerox enough copies. And we'll wrestle with the exhibit

1 issues.

2 Thank you. Please deliberate on your verdict.

3 (At 3:13 p.m., the jury retired to deliberate)

4 THE COURT: Please be seated.

5 Andy, how are we going to handle the exhibits?

6 THE DEPUTY CLERK: The parties have their exhibits
7 that were admitted that I have checked their admission and
8 where Aditi and I have marked so they have hard copies of
9 nonmedia exhibits. They have those originals ready to go in to
10 the jury room, and they also have supplied us with a clean
11 laptop that each side has a thumb drive with the admitted
12 exhibits on them, including the media exhibits and the
13 spreadsheets, if I'm correct. Right?

14 THE COURT: Okay. Now first of all, I assume they are
15 secure. Nobody can delete one or whatever by accident; is that
16 right?

17 THE DEPUTY CLERK: That is beyond my knowledge.

18 THE COURT: Counsel? Yes?

19 MR. ROOS: Yes.

20 THE COURT: Read only, read only. That's the phrase
21 I'm looking for.

22 Okay. Now is that procedure satisfactory to both
23 sides?

24 MR. ROOS: Yes.

25 MR. EVERDELL: Yes, your Honor.

1 THE COURT: Okay. And Andy will be the one to deliver
2 the exhibits, without any further proceedings in open court,
3 yes?

4 MR. ROOS: That's fine.

5 MR. EVERDELL: Yes, your Honor.

6 THE COURT: Okay. I guess we will reconvene very
7 briefly around a quarter to 4, ten to 4, whenever we get notice
8 about what they're going to do, and we'll take it from there.

9 Anything else we need to do before we break?

10 MR. EVERDELL: Your Honor, do you want to talk about
11 the indictment to go back to the jury?

12 THE COURT: Oh, yes, yes. Let's just make a record of
13 that.

14 I've been given a proposed redacted indictment, which
15 is undoubtedly somewhere in the cloud of paper on my desk.
16 Let's mark this Court Exhibit W. And we'll send that in to the
17 jury room. And that's satisfactory to both sides, I
18 understand.

19 MR. RAYMOND: Yes, your Honor, for the government.

20 MR. EVERDELL: Yes, your Honor. Just to be clear,
21 it's not redacted. It's had the portions removed. So to be
22 clear about that.

23 THE COURT: Okay with me.

24 MR. EVERDELL: Okay. Thank you, your Honor. It's
25 satisfactory.

1 THE COURT: If it's okay with both of you, it's okay
2 with me.

3 Okay. Anything else?

4 Okay. We'll designate a dinner hour if they decide to
5 stay for dinner, but otherwise, everybody is to be—I mean,
6 counsel on both sides who are capable of acting, authorized to
7 act, ought to be in the courtroom or in the immediate environs.
8 Andy has to know where to get you at any time.

9 And that's that. We'll await further communications.

10 ALL COUNSEL: Thank you.

11 THE DEPUTY CLERK: All rise.

12 (Recess pending verdict, 3:17 p.m.)

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1 THE COURT: I just want to put on the record that the
2 charge as it was typed and distributed to you previously has
3 now got handwritten delineations which has been provided to
4 both sides, and we will mark it as Court Exhibit whatever Andy
5 tells me.

6 THE DEPUTY CLERK: Z.

7 THE COURT: Z.

8 The proposal is to have Andy deliver 12 copies to the
9 jury in that form?

10 Any objection.

11 MS. SASSOON: Looks good, your Honor. No objection.

12 MR. COHEN: No objection.

13 THE COURT: We will do that.

14 In case the word has not filtered to you, the jury has
15 asked for dinner and transportation.

16 Another note.

17 Two more notes.

18 Note 1 says: "We want cars." That will be Court
19 Exhibit AA.

20 Court Exhibit BB says: "The defense thumb drive
21 appears to only have one audio file of portions of the
22 all-hands meeting. There seem to be missing government
23 exhibits, including 558, on the thumb drive as well."

24 MS. SASSOON: As I understood it, an exhibit like 558
25 wouldn't be on the thumb drive because it's a document.

1 MR. EVERDELL: Your Honor, the defense drive just has
2 the one portion that the defense submitted from the all-hands
3 meeting, that one audio portion. So the thumb drive and the
4 hard copy binders have the rest of the defense exhibits that
5 were admitted.

6 THE COURT: It sounds to me like this is a very simple
7 message. The very simple message is clear. I would normally
8 bring the jury in and tell them, but it seems may be
9 sufficiently simple so everyone can agree that Andy will simply
10 tell them. If anybody wants to have the jury brought in and
11 told on the record, I will do that.

12 MR. EVERDELL: Fine to have Andy do it, your Honor.

13 MS. SASSOON: No need to bring them in.

14 THE COURT: Andy, the message is: 558 is a document
15 and only a portion of 558 is on the thumb drive. It's the
16 portion the defense put in, and they should look at 558 on the
17 government thumb drive, right?

18 MS. SASSOON: No.

19 THE COURT: Then we are going to bring them in.

20 MS. SASSOON: Two different things, your Honor.

21 558 is the terms of service, so it's a document that
22 should be in the government exhibit binder. And what is on the
23 defense drive, they said it's just one file, that is the
24 entirety of what should be on that drive. The defense put in
25 one audio exhibit.

1 THE COURT: Here is what I missed. I assumed,
2 incorrectly apparently, that the government exhibits went in on
3 a thumb drive. Apparently, they went in in hard copy. Is that
4 right?

5 MR. REHN: I think the message should say: The
6 exhibits are in hard copy, with the exception of multimedia and
7 spreadsheets, which are on the thumb drives for both government
8 and defense.

9 THE COURT: Andy, let's have you repeat it back for
10 the court reporter so we are sure you have it, unlike I,
11 straight.

12 THE DEPUTY CLERK: I am going to print it off the
13 transcript myself, so I make no error.

14 MR. REHN: There is one thumb drive containing
15 government exhibits and one thumb drive containing defense
16 exhibits.

17 THE DEPUTY CLERK: I was going to copy and print that
18 the exhibits are in hard copy with the exception of multimedia
19 and spreadsheets, which are on the thumb drives for both
20 government and defense.

21 THE COURT: Satisfactory.

22 Let us mark that exhibit Court Exhibit BB, and Andy
23 will take it in writing marked Court Exhibit BB.

24 Now. Inasmuch as they have ordered supper, when do
25 you want your dinner hour, folks?

1 MS. SASSOON: If the jury has a preference if they
2 want to relay to Andy, we will defer to them.

3 THE COURT: Let just make a command decision here.

4 THE DEPUTY CLERK: Judge, if I may I told the
5 cafeteria manager to expect to supply dinner about 6:00.

6 THE COURT: We will trust the cafeteria manager to
7 supply dinner at 6, so you guys are free from 6 to 7.

8 Thank you.

9 (Recess pending verdict)

10 THE COURT: I just want to make a record of the
11 various notes, and I'm going to take them out of order.

12 About an hour ago the jury sent in a note, now Court
13 Exhibit EE: "Can we get the transcripts of the Matt Huang and
14 Robert Boroujerdi testimonies."

15 I gather you have agreed on the excerpts to go in, and
16 they are marked Court Exhibits FF and GG.

17 Yes?

18 MR. EVERDELL: Yes, your Honor.

19 MS. SASSOON: Yes, your Honor.

20 THE COURT: Take them on in.

21 Just to make a record, the first note was: "May we
22 have some highlighter pens and some Post-its, please," Court
23 Exhibit CC. Those were provided.

24 And Court Exhibit DD: "Can we get a copy of the
25 actual indictment." And you were all informed of these and the

1 redacted indictment, which has been identified previously on
2 the record, was sent in.

3 Everyone agree to all that?

4 MS. SASSOON: Yes.

5 MR. EVERDELL: Yes, your Honor.

6 THE COURT: We will recess pending further
7 communication from the jury.

8 (Recess pending verdict)

9 THE COURT: We have a note from the jury saying they
10 have reached a verdict. It's marked Court Exhibit HH. It is
11 signed by juror number 4 as foreperson.

12 Before you bring in the jury, we will have decorum in
13 the courtroom when this is announced. No demonstrations, no
14 shouting, no running for the door. Everyone is to remain
15 seated until I discharge the jury.

16 Bring in the jury.

17 (Jury present)

18 THE COURT: Madam Foreperson, I understand the jury
19 has reached a verdict, is that right?

20 THE FOREPERSON: Yes.

21 THE COURT: Would you please give the verdict to Andy.

22 Thank you.

23 The original verdict form is temporarily in your
24 custody. The clerk will now publish the verdict.

25 THE DEPUTY CLERK: Would the foreperson please rise.

1 THE COURT: Mr. Bankman-Fried, please rise and face
2 the jury box.

3 THE DEPUTY CLERK: As to Count One, wire fraud (FTX
4 customers) how do you find the defendant, guilty or not guilty?

5 THE FOREPERSON: Guilty.

6 THE DEPUTY CLERK: As to Count Two, conspiracy to
7 commit wire fraud (FTX customers), guilty or not guilty?

8 THE FOREPERSON: Guilty.

9 THE DEPUTY CLERK: As to Count Three, wire fraud
10 (Lenders to Alameda Research), guilty or not guilty?

11 THE FOREPERSON: Guilty.

12 THE DEPUTY CLERK: As to Count Four, conspiracy to
13 commit wire fraud (Lenders to Alameda Research), guilty or not
14 guilty.

15 THE FOREPERSON: Guilty.

16 THE DEPUTY CLERK: As to Count Five, conspiracy to
17 commit securities fraud, guilty or not guilty?

18 THE FOREPERSON: Guilty.

19 THE DEPUTY CLERK: As to Count Six, conspiracy to
20 commit commodities fraud, guilty or not guilty?

21 THE FOREPERSON: Guilty.

22 THE DEPUTY CLERK: As to Count Seven, conspiracy to
23 commit money laundering, guilty or not guilty?

24 THE FOREPERSON: Guilty.

25 THE DEPUTY CLERK: Thank you. Please be seated.

1 THE COURT: There is another question, Andy.

2 THE DEPUTY CLERK: My apologies.

3 Is your unanimous verdict based on concealment money
4 laundering, wire fraud proceeds money laundering, or both?

5 THE FOREPERSON: Both.

6 THE COURT: Thank you.

7 You may be seated, Mr. Bankman-Fried.

8 Andy you can recapture the original verdict form.

9 MR. COHEN: Your Honor, we would ask that the jurors
10 be polled.

11 THE COURT: Of course.

12 The clerk will poll the jury.

13 THE DEPUTY CLERK: Juror number 1, is that your
14 verdict?

15 JUROR: Yes.

16 THE DEPUTY CLERK: Juror number 2, is that your
17 verdict?

18 JUROR: Yes.

19 THE DEPUTY CLERK: Juror number 3, is that your
20 verdict?

21 JUROR: Yes.

22 THE DEPUTY CLERK: Juror number 4, is that your
23 verdict?

24 JUROR: Yes.

25 THE DEPUTY CLERK: Juror number 5, is that your

1 verdict?

2 JUROR: Yes.

3 THE DEPUTY CLERK: Juror number 6, is that your
4 verdict?

5 JUROR: Yes.

6 THE DEPUTY CLERK: Juror number 7, is that your
7 verdict?

8 JUROR: Yes.

9 THE DEPUTY CLERK: Juror number 8, is that your
10 verdict?

11 JUROR: Yes.

12 THE DEPUTY CLERK: Juror number 9, is that your
13 verdict?

14 JUROR: Yes.

15 THE DEPUTY CLERK: Juror number 10, is that your
16 verdict?

17 JUROR: Yes.

18 THE DEPUTY CLERK: Juror number 11, is that your
19 verdict?

20 JUROR: Yes.

21 THE DEPUTY CLERK: Juror number 12, is that your
22 verdict?

23 JUROR: Yes.

24 THE DEPUTY CLERK: Verdict unanimous, your Honor.

25 THE COURT: Mr. Cohen, Ms. Sassoona, is there any

1 reason why the verdict should not be filed and recorded?

2 MS. SASSOON: No, your Honor.

3 MR. COHEN: No, your Honor.

4 THE COURT: The verdict will be filed and recorded.

5 Members of the jury, you have completed your task. I
6 have a couple of words to say to you.

7 First of all, there was a very distinguished judge of
8 this Court who has now long left us, probably generally
9 regarded as the finest trial judge of the 20th century in this
10 country, Ed Weinfeld. And Judge Weinfeld's belief, and I and
11 most of the rest of us follow pretty much everything he ever
12 said, don't follow him in one thing, and it is that it was his
13 belief that serving on a jury is a privilege and a duty of
14 citizenship and it doesn't deserve thanks. It is a duty, it is
15 a privilege of citizenship, it does deserve thanks, and you
16 deserve thanks, each and every one of you.

17 It was obvious from the first day of this case that
18 you paid attention, however complicated it got from time to
19 time. You learned a whole new industry in the course of it.
20 You took your job just as seriously as you could have taken it,
21 and I thank you. I know counsel on both sides thank you.

22 You did what we hope all citizens do when called for
23 jury service, and of course I make no comment on the verdict.
24 That was your call. It is not mine. I express no opinion on
25 it, and I never have, and I don't plan ever to do so. But you

1 have my thanks and those of the others I have mentioned for
2 your service in this case.

3 Now, in just a minute I am going to discharge you and
4 you will go about your business. You will be free to either
5 talk about this case privately or otherwise, or not to talk
6 about this case, privately or otherwise. That's your call too.
7 Should you elect to say anything to anybody about it, I would
8 simply urge on all of you some sensitivity to the concerns and
9 feelings that other members of the jury may have about privacy
10 and about what you say. It's the golden rule: Do unto others
11 as you would have them do unto you.

12 If anybody involved in the case, the parties or the
13 people who work for the parties, lawyers or whatever, the
14 question of whether you talk to them or not is up to you should
15 they contact you. But if you elect to say no or I've had
16 enough, I don't want to talk anymore and any of the lawyers or
17 people who are working with the lawyers don't easily take no
18 for an answer, you let Andy know, and I will take appropriate
19 steps to see that you are not bothered if I lawfully can do so.

20 With that, you are discharged. Andy will escort you
21 into the jury room, and you can collect your stuff and head off
22 with thanks.

23 You will leave your notes or whatever in there, and he
24 will take care of them.

25 Counsel will remain and everyone else will remain for

1 a moment too.

2 THE DEPUTY CLERK: Would the jury please come this
3 way.

4 (Jury discharged)

5 THE COURT: Now, we have scheduled a second trial of
6 counts that were severed before this case was tried. I believe
7 it's set for March 11.

8 I would ask the government -- I will tell the
9 government to let me know by February 1 if that's going to
10 proceed. Obviously, it may be that you will come close to
11 February 1 and there will be a good reason why you can't say.
12 If that's so, you will let me know, but I want an update on
13 that come February 1.

14 Now, what is the government's position with respect to
15 setting a sentencing date on the present matter?

16 MR. ROOS: Your Honor, you are correct that obviously
17 the second trial may have an implication on that. That said,
18 we think it makes sense to set a sentencing date to get the PSR
19 process started. We, of course, can always move that. But if
20 we wait, we can't.

21 THE COURT: I am just going to wait until Andy gets
22 back in a second because he is the only one who knows my
23 calendar as between the two of us, or indeed I can try to fly
24 blind on my own. Let's see if I can get my calendar.

25 We will set sentencing for March 28 at 9:30 in the

1 morning.

2 Any defense submissions will be due February 16 and
3 government submissions will be due March 8.

4 Is that enough time, Mr. Cohen?

5 MR. COHEN: I was wondering, your Honor, if we might
6 have a bit more time on this, maybe a couple more weeks.

7 THE COURT: February 27; government, March 15.

8 Is that enough time for the government?

9 MR. ROOS: Yes, your Honor.

10 THE COURT: The schedule is: Defendant submissions by
11 February 27, government submissions by March 15, sentencing
12 March 28.

13 Is there anything else we need to accomplish tonight?

14 MR. COHEN: A schedule for posttrial motions, your
15 Honor.

16 THE COURT: Sure. What do you have in mind?

17 MR. COHEN: I think under the rule we get two weeks,
18 which would take us to the 16th. We would ask if we could
19 submit on the 20th.

20 THE COURT: That's November 20.

21 MR. COHEN: Yes.

22 THE COURT: Sure. That's fine.

23 Government.

24 MR. ROOS: In light of the holiday, can we have three
25 weeks from that date?

1 THE COURT: December 11.

2 Reply papers by December 18.

3 I'll set an argument date later.

4 Anything else this evening?

5 MR. ROOS: No, your Honor.

6 MR. COHEN: No, your Honor.

7 THE COURT: I just want to express appreciation to
8 counsel on both sides for a very well-prepared case and a great
9 deal of cooperation between attorneys on both sides and a good
10 job all around.

11 I think that's all I really want to say right now.

12 Thank you very much.

13 (Adjourned)

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